STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	**:**	
	:	
Proposed implementation of High	**:**	**00-0393**
Frequency Portion of Loop	**:**	
(HFPL)/Line Sharing Service.	**:**	
(Tariffs filed April 21, 2000)	**:**	

PROPOSED ORDER ON REHEARING

DATED: August 10, 2001

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By the Commission:

I. INTRODUCTION AND PROCEDURAL HISTORY

On April 21, 2000, Ameritech Illinois filed tariff describing the terms and conditions under which it intended to offer requesting carriers the opportunity to provide advanced services to customer utilizing the high frequency portion of voice loops ("HFPL tariff") that is the subject of this proceeding. On June 1, 2000, the Commission elected to suspend and investigate Ameritech Illinois' HFPL tariff pursuant to Section 9-201 of the Illinois Public Utilities Act. Several parties filed petitions seeking leave to intervene, which were granted by the Hearing Examiner, including Rhythms Links, Inc. ("Rhythms"), AT&T Communications of Illinois Inc. ("AT&T"), Sprint Communications LP ("Sprint"), Covad Communications Co. ("Covad") (who later withdrew from the case, but reappeared on rehearing), WorldCom, Inc. ("WorldCom"), Focal Communications of Illinois ("Focal"), and the CLEC Coalition (a consortium of CLECs including @Link Networks, Inc., CoreComm Illinois, Inc., DSLnet Communications, LLC and Vectris Telecom, Inc). After proper notice, evidentiary hearings were held in this matter before a duly authorized Hearing Examiner at the Commission's Springfield, Illinois offices on October 16 through October 19, 2000. Ameritech Illinois, Rhythms, AT&T, Sprint and the CLEC Coalition filed Initial Briefs on November 17, 2000 and Reply Briefs were filed on December 18, 2000. Exceptions and Replies to Exceptions were filed on January 26, 2001 and February 2, 2001, respectively.

The Commission issued its Order on March 14, 2001 ("the Order"). the Commission considered the matter and, on March 14, 2001, entered an Order in the matter which, inter alia:

1. required Ameritech to offer its "Project Pronto" architecture to CLECS as six unbundled network elements (hereafter "UNEs"), Order at 25;
2. required Ameritech to offer CLECs direct access to back office systems for pre-ordering, ordering, provisioning and billing purposes, Order at 63-66;
3. determined that Ameritech was entitled to recover $0 for the HFPL, Order at 86-87;

4. determined that Ameritech was entitled to recover $0 for manual loop qualification, Order at 83 and:
5. determined that Ameritech was entitled to recover $0 for recurring OSS modifications. Order at 88.

On April 13, 2001, Ameritech Illinois filed an Application for Rehearing pursuant to 220 ILCS 5/10-113. The Commission granted the Application on May 1, 2001 as to Issues No. II, III, VI, VIII, IX, XIII, and XIV, with those numbers corresponding to the roman numeral sections in Ameritech Illinois' Application for Rehearing (we use those issue numbers in our headings below). After proper notice, evidentiary hearings were held at the Commission's Springfield, Illinois offices before a duly authorized Hearing Examiner from July 17 through July 25, 2001. The following witnesses testified on behalf of Ameritech Illinois: Debra Aron, Christopher Boyer, Christopher Cass, Robert Crandall, Derrick Hamilton, Ross Ireland, James Keown, Stanford Levin, Cherylann Mears, John Mitchell, Niel Ransom, Stephen Waken, and Mark Welch. Torsten Clausen and Robert Koch testified on behalf of Staff; Michael Starkey testified on behalf of AT&T and WorldCom; Terry Murray, Melia Carter, and Larry Gindlesberger testified on behalf of Covad; and Joseph Ayala and Danny Watson testified on behalf of Rhythms. On August 3, 2001, the parties filed their Initial Briefs on Rehearing. The Hearing Examiner issued a Proposed Order on Rehearing. Briefs on Exceptions and Replies, as received have been considered in reaching the findings and conclusions herein.

The issues on rehearing are as follows:

II. Whether requiring Ameritech Illinois to unbundle its Project Pronto DSL facilities violates federal law.

III. Whether Project Pronto NGDLC line cards meet the federal legal standards for collocation.

VI. Whether unbundling Project Pronto DSL facilities is technically, practically, and economically feasible and efficient.

VIII. Whether setting the monthly recurring charge for the HFPL UNE at $0 is unlawful.

IX. Whether Ameritech Illinois must allow CLECs to have direct access to its back office systems.

XIII. Whether setting the nonrecurring charge for manual loop qualification at $0 is unlawful.

XIV. Whether setting the monthly recurring charge for OSS modifications at $0 is unlawful.

II. DISCUSSION

ISSUE II WHETHER REQUIRING AMERITECH ILLINOIS TO UNBUNDLE ITS PROJECT PRONTO DSL FACILITIES VIOLATES FEDERAL LAW.

The disposition of this issue requires a number of inquiries. First, whether ordering the unbundling of Project Pronto is precluded by the fact that the FCC has previously decided against unbundling ILEC packet switching. Second, in the event that decision does not preclude unbundling packet switching, whether Project Pronto should be unbundled in view of the qualifiers for unbundling of packet switching established by the FCC at Section 51.319. Third, whether unbundling Project Pronto meets the impair standard of Section 51.317. Finally, in the event the Commission decides not to adopt the specific unbundling requirements of its previous order, are there any suitable alternatives that would serve the CLECs interests as well.

A. Ameritech

1. Ameritech Illinois' Position on Packet Switching Issues

Ameritech Illinois argues that the Order errs in requiring the unbundling of the Project Pronto DSL architecture, or any part thereof, because that architecture provides packet switching functionality. Ameritech Illinois asserts that the FCC, in its Rule 319(c), established that packet switching functionality can only be unbundled in very limited circumstances. Rule 319(c) requires that four conditions must exist before packet switching functionality can be ordered to be unbundled. Ameritech Illinois contends that the FCC arrived at these conditions after applying the "impair" test from Section 251(d)(2) and Rule 317, and the goals of the 1996 Act, to packet switching functionality, and that the FCC concluded that CLECs are not "impaired" by a denial of access to packet switching functionality except when all of the limited circumstances delineated by Rule 319(c) exist.

Ameritech Illinois asserts the Commission is bound by the FCC's analysis here and is not free to subject the Project Pronto packet switching facilities to an independent "impair" analysis under Section 251(d)(2) and Rule 317. Ameritech Illinois contends that the record on rehearing indicates that none of the four Rule 319(c) conditions exist in Illinois, and therefore, that the Commission cannot order the unbundling of its Pronto DSL facilities.

Condition 1: "The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault)."

Ameritech Illinois argues that this condition is not met simply where an ILEC has deployed digital loop carrier ("DLC") systems anywhere in its network. Rather, the condition must be applied on a location-by-location basis, and is only satisfied when the DLC system is one "in which fiber facilities replace copper facilities in the distribution section" of the loop. Ameritech Illinois argues that the FCC's concern here was with situations where an ILEC had actually "replaced" copper distribution facilities with fiber and where no spare copper facilities were available. UNE Remand Order, ¶ 313. Ameritech Illinois asserts this condition is not met in Illinois because Project Pronto involves purely overlay DSL facilities that do not "replace" or displace any of the existing copper distribution facilities. Ameritech Illinois adds that under the Project Pronto Order there are requirements regarding maintenance of existing copper facilities. Ameritech Illinois argues this condition would be rendered a nullity if it were satisfied simply because an ILEC deployed DLC systems, because it would be automatically satisfied everywhere (since virtually all ILECs have some DLC systems in their network).

Condition 2: "There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer."

Ameritech Illinois argues that a determination of whether this condition exists can only be made on a case-by-case (that is, an RT-by-RT) basis. Ameritech Illinois contends that the FCC was interested here in a specific "limited situation" where "no spare copper facilities are available," because it is only in that specific case that a CLEC's ability to provide broadband service might be impaired. UNE Remand Order, ¶ 313. Ameritech Illinois asserts that because Pronto DSL equipment is an overlay, any spare copper facilities that existed before Pronto DSL deployment would still be available after deployment. And, Ameritech Illinois continues, these spare copper facilities will be useful to CLECs for providing DSL services, either by collocating a DSLAM at an RT or elsewhere. Ameritech Illinois further argues that the only empirical evidence submitted on "cross talk" problems between CO-based DSL service and RT-based DSL service indicates that Ameritech Illinois has not encountered any such problems and that it has implemented a measure that will remove any such problems should they arise.

Condition 3: "The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this Section."

First, Ameritech Illinois argues that this condition also asks an RT-by-RT question of whether the ILEC has actually denied a CLEC request to deploy a DSLAM at a particular RT or similar location or to virtually collocate a DSLAM in that location. Ameritech Illinois asserts that this condition is not met because it has never denied a specific request by a CLEC to collocate a DSLAM at an RT or similar location in Illinois; in fact, no CLEC has even requested such collocation at an Ameritech Illinois RT.

Ameritech Illinois further asserts that it is undisputed that it allows collocation of DSLAMs at its existing RTs and has committed to allow such collocation in future RTs. Ameritech Illinois adds that it is required to create space or build extra space in RTs specifically to accommodate such collocation, which should remove any alleged space concerns. Project Pronto Order, ¶¶ 34-35 and App. A at 38-40.

Second, Ameritech Illinois addresses the CLECs' claim that it has denied DSLAM collocation because it has not allowed "collocation" of ADLU cards. Ameritech Illinois asserts that an ADLU card is not a DSLAM because an ADLU card does not perform each of the four functions listed in ¶ 303 of the UNE Remand Order that define a DSLAM. Specifically, Ameritech Illinois argues that the CLECs concede that an ADLU card does not perform the third and fourth functions listed in ¶ 303 (packetizing and multiplexing), which are performed by the ABCU card and the rest of the NGDLC hardware and software. Ameritech Illinois contends the only equivalent to a DSLAM in the Pronto architecture would be the NGDLC system as a whole.

Third, Ameritech Illinois argues that this condition focuses only upon the objective denial of DSLAM collocation by an ILEC, and does not permit consideration of subjective factors that might keep the CLEC from requesting collocation, such as the economic feasibility of collocation. Therefore, Ameritech Illinois concludes, the expense to CLECs of DSLAM collocation cannot be considered and is irrelevant. Ameritech Illinois also asserts that CLEC claims that DSLAM collocation is too expensive are belied by evidence that Sprint has included DSLAM collocation in its business plans. Moreover, Ameritech Illinois adds that the FCC has already considered the expense and other factors related to DSLAM collocation in its packet switching unbundling analysis, UNE Remand Order, ¶ 309, and that the FCC's conditions in the Project Pronto Order responded to these very same CLEC concerns. Ameritech Illinois asserts that it is required by that order to have adequate space for DSLAM collocation, and to construct an Engineering Controlled Splice ("ECS") upon request to enable a CLEC to access copper subloops from a collocated DSLAM.

Condition 4: "The incumbent LEC has deployed packet switching capability for its own use."

Ameritech Illinois argues this condition asks the case-by-case question whether the ILEC deploys packet switching for its own use at a particular RT. Ameritech Illinois asserts that the condition does not exist in Illinois because Project Pronto DSL facilities would be used by (1) CLECs in provisioning their own xDSL services, and (2) Ameritech Illinois' separate affiliate, AADS, in providing xDSL services. Thus, Ameritech Illinois concludes, it would not use the Project Pronto DSL facilities for any retail services that it provides, and thus would not be deploying packet switching "for its own use."

2. Ameritech Illinois' Position on the Impair Test

While urging the Commission to rely solely upon the packet switching exception to the general unbundling requirements of the FCC in refusing to order the unbundling

of Project Pronto, Ameritech argues, in the alternative, that various other FCC pronouncements would lead to the same conclusion. Ameritech first notes that under FCC rule 317, non-proprietary network elements (including those making up Project Pronto) are only to be unbundled it the lack of the unbundled elements would impair requesting carriers from providing service. Ameritech repeats its view that the FCC already applied the "impair" test to packet switching in arriving at its packet switching unbundling criteria in Rule 319(c)(5), and thus, the Commission lacks authority to conduct a "fresh" application of the FCC's "impair" test to the Pronto DSL facilities in this case. Ameritech Illinois also argues that because the FCC has found that CLECs are not impaired today in their ability to provide advanced services, it is logically impossible for them to be impaired if Pronto DSL facilities are deployed and they gain more options to provide DSL services to more customers. However, Ameritech Illinois argues that even under an independent application of the Rule 317 "impair" test – which it believes is impermissible – the CLECs have not demonstrated that they are "impaired" by lack of access to unbundled Pronto DSL facilities – that lack of unbundled access does not "materially diminish" the CLECs' ability to provide the services they seek to offer.

First, Ameritech Illinois argues that the Rule 317(b)(2) factors do not support a finding of "impairment" in light of the available alternatives to unbundling Pronto DSL facilities. Ameritech Illinois argues there are three primary alternatives to unbundling Pronto DSL facilities: (1) the Broadband Service required by the Project Pronto Order, (2) collocating DSLAMs and using unbundled copper subloops or loops with the CLEC's own equipment; and (3) self-provisioning or buying or leasing facilities from a third-party provider.

Ameritech notes that Section 317(b)(2) sets forth five criteria that the FCC has indicated must be examined in performing the "impair test." The five criteria are cost, timeliness, quality, ubiquity and impact on network operations. Ameritech then undertakes and examination of each.

In terms of cost, Ameritech Illinois argues that the Broadband Service would be less expensive for the CLECs than using Pronto "UNEs" because the TELRIC-based price for the Broadband Service would not include the millions of dollars Ameritech Illinois would have spend to be able to provide Pronto "UNEs." Ameritech Illinois also asserts that DSLAM collocation is a cost-effective means of competition, noting that the CLECs exaggerate the costs of DSLAM collocation at RT sites, that Sprint has included such collocation as a leading component of its DSL business plans, and that the investments for such collocation are less than those made by cable modem service providers to provide broadband services. Finally, Ameritech Illinois points out that CLECs are free to invest in their own new equipment, and that the FCC has recognized that the deployment costs of wireless and satellite broadband technologies are generally much lower than the costs for cable modem and DSL service.

In terms of timeliness, Ameritech Illinois argues that CLECs using the Broadband Service will be able to access customers as rapidly as the Pronto DSL facilities are deployed. Moreover, Ameritech Illinois argues that because the standard provisioning

interval for the Broadband Service is three days, CLECs could quickly use the Broadband Service in the interim while pursuing DSLAM collocation at RTs in chosen areas. In contrast, Ameritech Illinois asserts that providing advanced services via "unbundled" Pronto DSL facilities would depend on the deployment of new facilities and on the development of new systems and procedures. Ameritech Illinois further notes that CLECs could also use wireless and satellite systems to provide broadband service, the deployment times of which are generally much faster than those of DSL and cable modem service.

In terms of quality, Ameritech Illinois argues the Broadband Service would offer the same quality of service as an end-to-end "UNE" using the Pronto DSL facilities. Ameritech Illinois also explains that CLEC attempts to demand higher-bandwidth services or qualities of service over the Pronto DSL "UNEs" would increase the cost of and decrease the bandwidth available for serving the mass market for which the Pronto DSL architecture was designed. Ameritech Illinois asserts that self-provisioning and DSLAM collocation would give CLECs substantially more control over the quality of service they offer than would "unbundling" the Pronto DSL facilities.

In terms of ubiquity, Ameritech Illinois argues that the Broadband Service would be available with the same ubiquity as the deployment of Pronto DSL facilities themselves and would allow Ameritech Illinois to ensure that the capacity (and thus the reach) of the Pronto DSL infrastructure is maximized. In contrast, Ameritech Illinois argues, mandatory "unbundling" of Pronto DSL facilities would preclude any deployment of Pronto DSL facilities, and even if they were deployed, CLECs would be able to tie-up capacity in RTs by hogging certain elements, thereby preventing other CLECs from serving the areas covered by those RTs. Ameritech Illinois further asserts that self-provisioning would allow CLECs to determine exactly where they want to deploy advanced services facilities.

In term of impacts on network operations, Ameritech Illinois argues that CLEC use of the Broadband Service, DSLAM collocation, or wireless and satellite technologies by CLECs would minimally impact its network operations and should not threaten network reliability. Ameritech Illinois contends that requiring it to re-engineer the Pronto DSL facilities to meet CLEC demands and "unbundling" requirements would adversely impact capacity and service.

After examining the Section 317(b)(2) factors, Ameritech Illinois goes on to argue that even if the Commission determines that the CLECs are "impaired," without access to Project Pronto as unbundled elements, that does not end the analysis. Rather, the Commission must still examine whether "unbundling" Pronto DSL facilities is proper in light of the Rule 317(c) factors, which show that such an "unbundling" requirement would conflict with the goals of the 1996 Act.

Section 317(c) provides that in addition to undertaking the mandatory examination required by Section 317(b)(2), regulatory bodies may also look to a number of additional factors in reaching an unbundling determination. Those factors include the

rapid introduction of competition, the promotion of facilities based competition and the promotion of reduced regulation. Ameritech then examines each of the these factors.

In terms of the rapid introduction of competition, Ameritech Illinois asserts that the deployment of DSL facilities as planned would rapidly allow all DSL providers to reach huge numbers of new customers and thus vigorously compete with cable modem and other broadband service providers. Ameritech Illinois contends that, in contrast, the Order's Pronto "unbundling" requirements would impede the development of competition because Ameritech Illinois would either not deploy its Pronto DSL facilities, or, if it did deploy them, the costs of doing so would result in rates that would be too high for DSL providers to be competitive with other broadband service providers.

In terms of the promotion of facilities-based competition, investment, and innovation, Ameritech Illinois argues the Order's "unbundling" requirements will discourage facilities-based competition because CLECs will lease parts of its network where doing so is cheaper than building their own facilities and where they can do so without taking any of the investment risk necessary to deploy their own facilities. Ameritech Illinois also asserts that "unbundling" is not needed here as a stepping-stone to facilities-based competition because broadband services require new investment in new equipment no matter who the carrier is and thus, this is not a case of a monopoly-to-competition transition. Ameritech Illinois further argues the Order's requirements discourage investment and innovation in advanced services facilities and send negative signals to other potential facilities-based providers of advanced services because (1) they increase the costs and risks of Ameritech Illinois' investment to such an extent that Ameritech Illinois has had to suspend the deployment of Pronto DSL facilities, and (2) they deprive Ameritech Illinois of control over and the fruits of its investment. Ameritech Illinois contends the net result of these negative impacts is that consumers in the mass market will be left with little choice in the broadband market aside from cable modem service providers.

In term of promoting reduced regulation, Ameritech Illinois argues that the Order's unbundling requirements would do nothing but increase regulation because every unbundling requirement increases regulation – regulators must oversee the terms and conditions of the sharing. Moreover, Ameritech Illinois asserts, the technical and operational difficulties caused by the Order's requirements would inevitably require regulatory decisions regarding what is technically feasible and compatible. Ameritech Illinois further asserts that these rigid requirements would be administratively difficult to apply to other deployment plans and carriers as the technologies change.

B. CLECs

1. General Policy Considerations

SBC/Ameritech has sought to make this case much more complicated than it needs to be. It has raised irrelevant policy arguments, invoked selective and out-of-context quotations from FCC orders, conjured up technical difficulties, and otherwise

sought to confuse the issues. To put matters in context, it may help to return to first principles -- and, in particular, to focus on the key statutory provisions.

Although the Federal Telecommunications Act of 1996 is a lengthy and complex statute, there is no doubt about its central objective: to create the conditions that would enable competition in local telecommunications services. At the heart of the statutory scheme is a set of obligations that apply uniquely to ILECs. 47 U.S.C. § 251(c). One critical requirement -- and the one that is pivotal here -- is the requirement that ILECs "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technical feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ." 47 U.S.C. § 251(c)(3). In determining whether particular elements should be made available on an unbundled basis, regulators "shall consider, at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2)(B).

That is what this case is about. It is about elements of SBC/Ameritech's network (especially the local loop), the desire of multiple requesting carriers to be able to provide DSL services (and combinations of voice and DSL services) in competition with SBC/Ameritech, and the inability of these requesting carriers to provide the services they wish to offer unless SBC/Ameritech cooperates in providing access to Project Pronto network elements.

The path to implementation of the statutory principles has not been straight, or smooth, or short. Litigation, reconsiderations and clarifications of prior orders, and various proceedings evaluating the application of existing rules to new facts and circumstances have all engendered delays and confusion. Still, the basic thrust of the Act remains clear, as does the FCC's commitment to making UNE-based competition work.

The FCC's First Report and Order took major strides forward in a host of areas. Most relevant for present purposes, that order identified the various elements of the ILECs' networks, elucidated the FCC's understanding of each of the statutory provisions, and applied those provisions as elucidated to each element of the ILECs' networks, including the local loop. For example, the FCC had no difficulty in determining that "it is technically feasible for incumbent LECs to provide access to unbundled local loops." First Report and Order, at ¶ 377. It also determined that "such access is critical to encouraging market entry." Id.; see also Id. at ¶ 378 (further explanation of value to competitors and to consumers of requiring loop unbundling). The FCC also determined that competing carriers are free to use unbundled loops to provide high-bit-rate services such as ADSL, (Id. at ¶¶ 381-382), and that the loop element should be defined in functional terms, and therefore includes integrated digital loop carrier technology or similar remote concentration devices. Id. at ¶¶ 383-385. It is important to note that, from the outset, the FCC made plain its understanding that "section 251(c)(3) requires incumbent LECs to provide requesting carriers with all of the

functionalities of a particular element, so that requesting carriers can provide any telecommunications services that can be offered by means of the element." Id. at ¶ 292 (emphasis added).

The Supreme Court then, for the most part, affirmed the First Report and Order but found it necessary to instruct the FCC to revise its application of the "impair" standard of section 251(d)(2)(B). AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721, 1999 WL 24568 (1999) (cited hereinafter as Iowa Utilities Board). This ultimately led to the UNE Remand Order, where the FCC affirmed the requirement for unbundling of the loop (including, specifically, digital loop carrier systems and their attached electronics), and obligated ILECs to provide unbundled access to subloops, or portions of the loop that are accessible at terminals in the ILECs' outside plant, at any accessible point. In doing so, the FCC reiterated the principle that loops and subloops, as all network elements, are not limited to particular services and technologies. The FCC also limited the circumstances under which local circuit switching, UNE Remand Order, at ¶ 253, and packet switching, Id. at ¶ 306, would be unbundled, and exempted certain items (such as operators services and directory assistance) altogether.

Much confusion has been engendered by the FCC's decision not to require the provision of unbundled packet switching, except in limited circumstances. The primary discussion of packet switching occurred in the context of stand-alone, central office-based, packet switches of the sort that at that time were being widely deployed by Covad, Rhythms, Northpoint, and many others, connected to all-copper loops. See Id. at ¶ 307. Although the FCC found that the lack of access to packet switches would in fact "impair" requesting carriers from competing, the FCC nonetheless refrained from establishing a generalized requirement for unbundling of packet switching. It did so because this result was advocated by two leading "DLECs," Northpoint and Rhythms, and because of its belief that the advanced services marketplace was nascent, that CLECs and cable companies were leading the ILECs in deploying advanced services, and (in the context then under consideration) that ILECs did not possess significant economies of scale compared to requesting carriers. See Id. at ¶¶ 306-308. The order also determined that packet switching would be unbundled in certain circumstances where a requesting carrier is unable to install its own DSLAM in a remote terminal or obtain spare copper loops necessary to offer the same quality of advanced services. Id. at ¶ 313.

The main confusion caused by the UNE Remand Order results from SBC/Ameritech's attempt to expand a minor exemption in a way that undermines a broader and more important rule. Specifically, SBC/Ameritech has attempted to extend an exemption for stand-alone packet switching into a license to decline to provide access to the full features, functions, and capabilities of the connection between central office and customer premises. The network elements that are relevant to the Project Pronto debate are not packet switches but loops and subloops, which the FCC found to be the "most time-consuming and expensive network element[s] to duplicate on a pervasive scale." Id. at ¶ 211. Alternatively, to the extent that the UNE Remand Order's treatment of packet switching is relevant at all, it is the exception to the

exemption -- for packet switching at the RT -- that governs. (As discussed below, the criteria which compel the provision of unbundled packet switching are fully satisfied in the Project Pronto architecture.)

Subsequently, in the Line Sharing Order, the FCC made plain its intention to assist companies that wish to use unbundled network elements to compete with ILECs in the provision of advanced services. There, the FCC created a new element that is clearly a "loop obligation", requiring ILECs to provide requesting carriers with line sharing, or access to the "high-frequency portion of the loop" on lines where the incumbent provides the voice service. The spirit and intent of the line sharing obligation is, and has always been, to provide CLECs access to an ILEC's local loop in order to spare consumers from the extra, needless costs of leasing or building separate lines. Moreover, it is clear from the Line Sharing Order that the FCC intended that its rules would be applied in a manner that would encourage competition and encompass new technologies and technological innovation to the fullest extent. Thus, contrary to SBC/Ameritech's claim that regulation of line sharing is unnecessary for advanced service deployment under 706 of the Act, the FCC explicitly recognized that the line sharing element is fully consistent with the FCC's duty to promote the rapid deployment of advanced services to all Americans as set forth in section 706 of the 1996 Act. Id. at ¶ 54.

Because the ILECs once again seized on ambiguities to thwart the FCC's pro-competitive intent, the FCC thereafter issued the Line Sharing Reconsideration Order, clarifying that the incumbent LECs' line sharing obligation extends to the entire loop, "even where the incumbent has deployed fiber in the loop." To be sure, the FCC's 1999 Line Sharing Order spoke in terms of access to copper loop facilities. Even there, however, the FCC did not intend that for a CLEC to be restricted to obtaining access to an upgraded loop at the remote terminal. To the contrary, the FCC clarified in the Line Sharing Reconsideration Order that a CLEC "must have the option to access [a fiber-fed] loop at either [the remote terminal or the central office], not the one that the incumbent chooses as a result of network upgrades entirely under its own control." Line Sharing Reconsideration Order, at ¶ 11. Critically, the FCC held that "it would be inconsistent with the intent of the Line Sharing Order and the statutory goals behind sections 706 and 251 of the 1996 Act [sic] to permit increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the provision of xDSL services." Id. at ¶ 13.

As the FCC has repeatedly recognized, granting CLECs unbundled access to the local loop is paramount in the effort to foster local competition. Nothing about the architecture of Project Pronto alters the basic functionality of a loop: to provide transmission functionality needed for a customer to send and receive telecommunications signals between his location and his chosen service provider's network. As with all network elements, the local loop is defined by its functionality and is not limited to particular services or technologies. The Project Pronto loop architecture now being installed by SBC/Ameritech provides exactly what the traditional loop has always provided: transmission functionality for telecommunications signals between a

customer's premises and the serving ILEC's central office. Likewise, the implementation of Project Pronto loop architecture does not change any of the fundamental legal and policy principles that underscore the FCC's other rules relating to the provision of network elements, including line sharing and subloops.

Thus, consistent with the FCC's decision in the UNE Remand Order -- as well as in the Line Sharing Order and Line Sharing Reconsideration Order -- the Commission should reiterate that CLECs seeking to provide line sharing over the Project Pronto architecture are entitled to unbundled access to the "entire" loop (see Tariff Order, at 25, Option f.), as well as all of the subloop elements used to support the provision of transmission functionality between the customers' premises and SBC/Ameritech's central office. As the Commission has already recognized, such network elements include:

a. Lit Fiber Subloops between the RT and the OCD in the CO consisting of one or more PVPs ("permanent virtual paths") and/or one or more PVCs ("permanent virtual circuits") at the option of the CLEC;

b. Copper Subloops consisting of the following segments:

   i. the copper subloop from the RT to the NID at the customer premises;

   ii. the copper subloop from the RT to the SAI ("serving area interface");

   iii. the copper subloop from the SAI to the NID at the customer premises.

c. ADLU line cards owned by the CLEC and collocated in the NGDLC equipment in the RT;

d. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;

e. A port on the OCD in the CO; and

f. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.

Tariff Order, at 25.

Requesting carriers need access to all of these "piece-parts" of ILEC networks, or to whichever combination of sub-elements best comports with their own assets and business plans. This is the only approach that will fulfill the provisions and policies of

the 1996 Act, as discussed above. It is the only approach that fulfills the directives of the FCC's various local competition orders. It is the only approach that will best ensure that Illinois consumer receive the benefits of robust competition in high-speed data services (and in combinations of voice and data services). In short, the ICC's prior rulings are solidly grounded in the law, and they represent the right public policy as well.

2. CLECs' Position on Packet Switching Issues

The CLEC's first argue that Ameritech has failed to produce any new evidence and has not identified any errors of fact or law in the original order from which they conclude that Ameritech has failed to satisfy the standard for rehearing. The CLEC's urge the Commission to reaffirm its original disposition of this issue for this reason alone.

In terms of arguments relating to the packet switching issue, as a threshold matter the CLECs assert that it is important to note that they are not asking for unbundled packet switching in this proceeding. Rather, the Joint CLECs are seeking unbundled access to line sharing over hybrid-copper loops, either on an end-to-end basis or via the unbundled elements set forth in the Tariff Order. As noted in Section III.A., and as recognized by this Commission (Tariff Order, at 24-25), the recent release of the FCC's Line Sharing Reconsideration Order has already settled this matter in favor of the Joint CLECs. In that Order, the FCC held that:

> [T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the work "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services. As noted above, incumbent LECs are required to unbundle the high frequency portion of the local loop where the incumbent LECs voice customer is served by DLC facilities . . . .
>
> * * *
>
> In the absence of this clarification, a competitive LEC might undertake to collocate a DSLAM in an incumbent's central office to provide line-shared xDSL services to customers, only to be told by the incumbent that it was migrating those customers to fiber-fed facilities and the competitor would now have to collocate another DSLAM at a remote terminal in order to continue providing line-shared services to those same customers. If our conclusion in the Line Sharing Order that incumbents must provide access to the high frequency portion of the loop at the remote terminal as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location, not the one that the incumbent chooses as a result of network upgrades entirely at its own control . . . . Line Sharing Reconsideration Order, at ¶¶ 10-11.

Indeed, the FCC issued its Line Sharing Reconsideration Order to ensure that "increased deployment of fiber-based networks by incumbent LECs [do not] unduly inhibit the competitive provision of xDSL services. Id. at ¶ 13. Accordingly, as this Commission recognized, SBC/Ameritech clearly now has the obligation to permit access to line sharing even over the Pronto architecture, and cannot attempt to rely on its policy argument that line sharing is only required over copper loops. Tariff Order, at 24-25.

Even if the Commission finds that the Project Pronto architecture deployed by SBC/Ameritech contains packet switching, the FCC requires ILECs to unbundle packet switching where the following conditions are satisfied:

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability for its own use.

Examination of the record evidence reveals that, contrary to SBC/Ameritech's assertions; these criteria have been satisfied when SBC/Ameritech deploys Project Pronto in Illinois. This Commission has already analyzed the four packet switching criteria and found that the "evidence demonstrates that all four criteria are satisfied and it is permissible to make the OCD . . . available as a UNE." See Rhythms/Covad Arb. Rehearing Award, at 32. For the reasons set forth below, that same analysis applies to the ADLU card. Even under the standards of the UNE Remand Order, the unbundling of SBC/Ameritech's "packet switching" components must be required in all circumstances where SBC/Ameritech has deployed DSL services over Project Pronto. This is exactly the determination reached by the Texas Arbitrator after reviewing a virtually identical fact pattern. Texas Arbitration Award, at 75-80. Paragraph 313 of the UNE Remand Order simply provides no basis to deny CLECs access to Project Pronto UNEs.

The first FCC criterion -- that an ILEC actually deploy a DLC system or introduce fiber into the distribution plant -- is obviously met. There is no question that

SBC/Ameritech is deploying NGDLC carriers throughout its Illinois network. Based on SBC's filings, the FCC characterized Project Pronto as relying in "large part upon the increased use of Digital Loop Carrier (DLC) systems to reduce overall costs." FCC Waiver Order, at ¶ 4. SBC/Ameritech's witnesses testified that the Company's Project Pronto efforts will result in the deployment of NGDLCs to reduce loop length and network condition limitations that will enable SBC/Ameritech to offer DSL services to over 20% more customers than it could previously reach in its Illinois service territory. Rehearing Tr. (Boyer), at 949:1 - 950:12. Thus, the FCC's first criterion of the packet switching rule has been satisfied.

The second FCC prerequisite to the unbundling of "packet switching capability" is the lack of spare copper facilities that are "capable of supporting the xDSL services the requesting carrier seeks to offer, "and that permit the CLECs to offer "the same level of quality for advanced services" as that offered by the ILEC (or its data affiliate). UNE Remand Order, at ¶ 313. SBC/Ameritech argues that the second FCC prerequisite for requiring unbundled access to packet switching, (i.e., that "no spare copper loops" are available) will not be met because all-copper loops will often be available to the CLECs. SBC/Ameritech is wrong.

As noted above, SBC/Ameritech's "all-copper" loop alternative is neither ubiquitous nor permanent. SBC/Ameritech has acknowledged that the purpose of Project Pronto is to overcome loop length issues that result from the traditional copper loop network. SBC/Ameritech Boyer Rehearing Exh. 4.0 at 5:23-6:6. With Project Pronto, loop lengths are shortened to 12,000 feet or less, Rehearing Tr. (Boyer), at 947-950, 954, which allows SBC to offer broadband xDSL services to 20 million additional customers. See FCC Waiver Order ¶ 4. In contrast, CLECs are permanently foreclosed from providing DSL services to these customers using SBC/Ameritech's all-copper loop alternative because of excessive loop lengths or other network conditions. Rehearing Tr. (Boyer), at 936-40. Similarly, in new areas of growth where only Project Pronto is deployed, there is no guarantee that CLECs will be able to access "all-copper" loops. Also, there is no assurance that all-copper loops will be preserved and maintained indefinitely. Rehearing Tr. (Boyer), at 998-1000; (Ireland) at 473.

In addition, the mere availability of an all-copper loop -- instead of the upgraded loops that are available to SBC/Ameritech and its affiliate -- does not discharge SBC/Ameritech's unbundling obligations associated with its Project Pronto architecture. As noted above, the physical characteristics of spare copper will almost never enable a competitive LEC to match the service capabilities that SBC/Ameritech (and its affiliate) are able to offer over its upgraded loop architecture. AT&T/WorldCom Starkey Rehearing Exh. 1.0, at 18:449-465. Thus, the mere availability of spare copper will not discharge SBC/Ameritech's unbundling obligation, because competitive LECs will not be able to use those facilities to "support[] xDSL services the requesting carrier seeks to offer," i.e., at least the same services that the ILEC and its affiliate can make available to the same customer. See 47 C.F.R. § 51.317(c)(5)(ii).

The FCC's third criterion provides that an "incumbent will be relieved of [its] unbundling [packet switching] obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM. UNE Remand Order, at ¶ 313; see also 47 C.F.R. § 51.317(c)(5)(iii). The FCC also notes that ILECs "may not unreasonably limit the deployment of alternative technologies when requesting carriers seek to collocate their own DSLAMs in the remote terminal." UNE Remand Order, at ¶ 313.

The record evidence in this proceeding demonstrates that SBC/Ameritech cannot satisfy this criterion. The FCC has found that the ADLU card is "an indispensable component for providing ADSL service through the manufacturer's NGDLC system." FCC Waiver Order, at ¶ 14, and n.34. SBC/Ameritech concedes that it does not permit requesting carriers to physically or virtually collocate line cards, which serve as the functional equivalent of a DSLAM, although it is technically feasible to do so. Rehearing Tr. (Keown) at 2033:7-2034:21.

Moreover, uncontroverted evidence indicates that SBC/Ameritech's decision to hardwire its equipment at the RT precludes any reasonable CLEC access to subloops at the RT even though vendors manufacture RTs with cross-connect functions that allow access to subloops. As a result, CLECs are forced to pay for a work-around or to build adjacent collocation space. As a result, a CLEC may have to pay per remote terminal for access to the subloop.

Finally, even if one does not consider the virtual collocation of line cards, collocation of DSLAM equipment is fraught with problems and inefficiencies, as detailed above. Indeed, both the FCC and this Commission have already found that CLEC collocation of DSLAMs is problematic. The FCC has indicated: "[a]ll indications are that fiber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminal is likely to be costly, time consuming, and often unavailable." Line Sharing Reconsideration Order, at ¶ 13. Similarly, this Commission has found that RT collocation "is limited by space constraints, is quite expensive (and may be uneconomic in many or most RT locations), and takes considerable time to deploy. Tariff Order, at 23. See also Rhythms/Covad Arb. Rehearing Award, at 32 ("Further, the high cost of collocation and crowded conditions in RTs often make collocation unavailable"). Accordingly, Ameritech/SBC's remote terminal alternatives cannot satisfy the third condition of the FCC's UNE Remand Order.

SBC/Ameritech argues that it does not meet the fourth criterion for unbundled "packet switching" -- that the "incumbent LEC has deployed packet switching capability for its own use." In particular, SBC/Ameritech claims that this condition does not apply to Project Pronto because the packet switching will not be for SBC/Ameritech's use but "only for CLECs' use."

This Commission has already addressed the absurdity of this position and has determined that Project Pronto is being deployed for SBC/Ameritech's own use: "[t]here is substantial evidence on the record that SBC, Ameritech IL's parent is deploying

Project Pronto for its own financial benefit, both in terms of cost savings and deployment of the advanced services market." Rhythms/Covad Arb. Rehearing Award, at 32. The record evidence in this proceeding calls for a similar determination. Substantial unrebutted evidence in this case demonstrates that SBC is deploying Project Pronto solely for its own benefit and explicitly because it believes that it can achieve substantial cost savings and profits by doing so. For example, SBC has described Project Pronto as "an unprecedented, $6 billion initiative . . . to transform the company . . . into the largest single provider of advanced broadband services in America," and it has told investors it expects Project Pronto to generate $3.5 billion in new annual revenues by 2004. SBC Chairman Edward Whitacre has boasted that, once Project Pronto is completed, "only SBC will have all the pieces" needed to provide the range of services that consumers want and expect. Nowhere in SBC's announcement of Project Pronto did it claim or imply that the project was undertaken "only for CLECs' use," as SBC/Ameritech' s revision of history now claims.

SBC/Ameritech may be relying on the fact that xDSL services will not be provided by SBC/Ameritech but by its data affiliate. Clearly, SBC/Ameritech proposes to use Project Pronto even if only to provide service to its new affiliate. Any such argument that the fourth condition of the FCC's unbundling criteria remains unsatisfied because xDSL services will not be provided by SBC/Ameritech but by its affiliate is meritless, however. SBC/Ameritech's argument would necessarily rest on precisely the conduct ruled unlawful by the D.C. Circuit in ASCENT -- the use of an affiliate to avoid section 251(c) obligations. As the ASCENT court made clear, data affiliates of incumbent LECs are subject to all obligations of section 251(c)(3) of the Act. Similarly, the FCC recently concluded, in light of the ASCENT decision, that an ILEC's 251(c) obligations extend to its affiliate, whether it continues to exist as a separate entity or whether it is integrated into the ILEC.

If the Commission determines that any of the criteria from FCC Rule 51.319(c)(5) are not satisfied, it still has the authority from federal and state law to order -- and it should order -- the unbundling of "packet switching" components in the NGDLC Project Pronto architecture. As set forth above, the FCC rules permit state commissions to order additional unbundling. "A state commission must comply with the standards set forth in this § 51.317 when considering whether to require the unbundling of additional network elements." 47 C.F.R. § 51.317(b)(4). Additional unbundling by state commissions is sanctioned by the FCC.

The FCC gave specific direction in the UNE Remand Order about unbundling "packet switching" elements if CLECs to prove that lack of access to such elements impairs their ability to offer advanced services.

> We note, however, that (CLECs) are free to demonstrate to a state commission that lack of access to the incumbent's frame relay network element (a form of packet switching) impairs their ability to provide the services they seek to offer. A state commission is empowered to require incumbent LECs to unbundle specific network elements used to provide

> frame relay service, consistent with the principles set forth in this order. UNE Remand Order, at ¶ 312.

Here, using the authority granted by the FCC, the Commission specifically can and should declare the packet switching elements of Project Pronto to be network elements that must be offered to CLECs on a non-discriminatory, unbundled basis. Using this federal authority this Commission can order additional unbundling under the Illinois Public Utilities Act § 13-505.6. The Commission should apply the impair standards from FCC Rule 51.317(b)(2). Joint CLECs argue that they are impaired without access to the Project Pronto network elements, including the so-called "packet switching" elements because (1) the Broadband Offering is a service offering that can be withdrawn at any time and is not subject to state commission oversight; (2) collocation of DSLAMs is costly, timely and inefficient; and (3) the existing copper loop network will not allow Joint CLECs to deploy advanced services on a ubiquitous and nondiscriminatory basis. If the Commission does not find that the UNE Remand Order criteria are satisfied, then using the impair analysis set forth by Joint CLECs the Commission should determine that CLECs are impaired without access to the "packet switching" network elements in Project Pronto.

Finally, Joint CLECs note that Illinois Public Act 92-0022 became effective on July 1, 2001, which is after the Commission issued its March 14, 2001 Order in this docket. CLECs argue that the amendment is a significant change to the Telecommunications Article of the Illinois Public Utilities Act. Many of these changes are applicable to this case, including Sections 13-501(b) (interim tariffs), 13-517 (provision of advanced telecommunications services), and perhaps most importantly, 13-801 (ILEC obligations). The relevant portion of Section 13-801(a) provides:

> This Section provides additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission. . . .
>
> An incumbent local exchange carrier shall provide a requesting telecommunications carrier with interconnection, collocation, network elements, and access to operations support systems on just, reasonable, and nondiscriminatory rates, terms, and conditions to enable the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access. The Commission shall require the incumbent local exchange carrier to provide interconnection, collocation, and network elements in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings. As used in this Section, to the extent that interconnection, collocation, or network elements have been deployed for or by the incumbent local exchange carrier or one of its

wireline local exchange affiliates in any jurisdiction, it shall be presumed that such is technically feasible in Illinois.

Joint CLECs maintain that these changes to Illinois telecommunications law give the Commission additional authority to identify UNEs, regardless of the "packet switching" exception made by the FCC. Specifically, Section 13-801 sets forth various ILEC obligations that are not inconsistent with the federal Telecommunications Act of 1996 and are not preempted by FCC orders. These ILEC obligations include the duties to provide collocation and network elements to the "fullest extent possible to implement the maximum development of competitive telecommunications services offerings." Sec. 13-801(a). The ILEC must combine "any sequence of network elements that it ordinarily combines for itself." Sec. 13-801(d)(3). The ILEC must allow virtual collocation of any equipment, for access to network elements. Sec. 13-801(c). Joint CLECs also point out that economic feasibility for the ILEC is not a statutory factor. Finally, Joint CLECs argue that their state law rights are independent of their federal rights and that their state law rights under Section 13-801 are in addition to their state law rights under Section 13-505.6.

3. CLECs' Position on the Impair Test

All parties in this proceeding agree that the Project Pronto network elements at issue in this case are not proprietary. SBC/Ameritech Mr. Boyer admitted that its Project Pronto network elements are not "proprietary in nature." Rehearing Tr. (Boyer), at 965:4-7. The Joint CLECs have argued throughout this proceeding that Project Pronto elements are not proprietary. Rhythms' Watson Rehearing, Exh. 2.0, at 15-16. Accordingly, the Joint CLECs need only establish, and the Commission need only determine, whether Project Pronto meets the "impair" standard and must be unbundled pursuant to the "impair" standard. Based on the testimony and substantial evidence submitted, in addition to the extensive cross-examination conducted during the seven days of hearing, it is clear that denying CLECs access to Project Pronto would impair CLECs' ability to provide competitive advanced services.

The "impair" standard as included in TA 96 and implemented in the FCC's rules requires ILECs to give unbundled access to a network element if lack of access "would merely limit a carrier's ability to provide the service it seeks to offer." Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, at ¶ 46 (rel. Nov. 5, 1999) (cited hereinafter as "UNE Remand Order"). More specifically, the FCC adopted a "materiality component" that provides for unbundling when there is a substantive difference between a CLEC utilizing a UNE or some alternative to offer a telecommunications service. UNE Remand Order at ¶ 51. In other words, if lack of access to Project Pronto network elements would materially diminish the value of xDSL services that CLECs could offer, their ability to provide such services is "impaired." UNE Remand Order at ¶ 51. In making a "materiality" determination, the following factors must be considered: cost, timeliness, quality of available alternatives, ubiquity, and operational factors. UNE Remand Order at ¶¶ 62-100. The Joint CLECs have submitted substantial evidence both in this proceeding and the case below

demonstrating that under each of these factors is satisfied; thus, SBC/Ameritech is required to unbundle Project Pronto.

All of the UNEs sought by the Joint CLECs In undertaking an "impair" analysis of the Project Pronto UNEs, the Commission must consider the following factors: cost, timeliness, quality of available alternatives, ubiquity, and operational factors. UNE Remand Order at ¶¶ 62-100.

In terms of cost, cost assessments include considering costs associated with alternatives, including the forward-looking costs of self-provisioning or purchasing, and fixed and sunk costs involved in self-provisioning. UNE Remand Order; ¶¶ 72-88. While Ameritech claims that CLECs will not be impaired without access to Project Pronto as UNES, Ameritech witness Mr. Boyer admitted that he did not consider the economics of whether CLECs would be impaired without access to Project Pronto UNEs. Rehearing Tr. (Boyer) at 968:8-22-969:1.

According to the CLECs, the economic effect on them is essential to determining whether CLECs will be impaired. SBC is investing six billion dollars in Project Pronto over three years. Rhythms' Ireland Rehearing Cross, Exh. 1. In its plans to deploy Project Pronto in Illinois, SBC/Ameritech estimates it would have covered "101 wire center[s], each with a new Optical Concentration Device ("OCD"), deployed 2,100 Next Generation Digital Loop Carrier systems (NGDLCs), each with a price tag of approximately $200,000, and resulted in a capital investment of $519 million dollars. Ameritech's Keown Rehearing Exh. 10.0, at 4-5. Only an ILEC such as SBC/Ameritech would have the financial resources and savings to make such an investment in infrastructure. The only available alternative for CLECS, if access to the Project Pronto architecture were denied, would be self-provisioning. Carriers providing advanced services provider simply do not have the financial resources to pour six billion dollars into developing advanced services network.

Sprint provided testimony about the cost of collocating DSLAMs at all of the remote terminals deployed by SBC/Ameritech in Illinois. Sprint witness, Mr. Burt, testified that Sprint has spent at least $130,000 and months in attempting to collocate just one DSLAM at a remote terminal in Kansas. Sprint Rehearing Ex. 3.0 (Burt), at 23. Sprint now estimates that it will spend $133,519 to gain access to the loops from that one RT in Kansas. (Ameritech Rehearing Burt Cross Exh. 2, at 2). Using the number of RTs in Illinois, Sprint alone would have to spend an estimated $260 million to obtain access to the same loop architecture which SBC/Ameritech can access. Sprint Rehearing Ex. 3.0 (Burt), at 23.

Given the costs that Sprint has incurred to collocate at one RT and SBC/Ameritech's own estimates that a CLEC can expect to gain less than one customer per serving area interface (SAI), SBC/Ameritech's economist, Dr. Aron, was asked if such an investment would be a good investment for a CLEC to make. She responded, "that it would not be reasonable tom make that investment, no." Rehearing Tr. (Aron), at 1624-1625.

Even if a small percentage of SBC's vast resources were available to CLECs, they do not have the same expansive network in place as SBC/Ameritech and therefore do not ability to deploy their networks and services quickly and ubiquitously. Rhythms Rehearing Testimony 3.0 (Murray), at 47-48. The only reason that SBC can deploy loop facilities designed to bring DSL capability to at least 80% of the customers in its 13-state region for the relatively small sum of $6 billion is that the company already has in place ubiquitous distribution plant, supporting structure such as poles and conduit and numerous other facilities, including upgradeable Digital Loop Carrier ("DLC") RTs, that were built to provide narrowband telecommunications services to its monopoly basic exchange customers. Rhythms Rehearing Testimony 3.0 (Murray), at 48.

In terms of timeliness, beyond the sheer cost of building comparable facilities to offer advanced services, the substantial delays involved in a massive self-provisioning effort would preclude CLECs' ability to compete effectively. The FCC indicated that it was concerned about such delays in its impair analysis. UNE Remand Order, at ¶¶ 89, 91. The FCC directed that state Commissions should consider time lags associated with using alternatives in performing impair analyses. In light of the rapidly changing advanced services market, the FCC found that "any delay" a competitive LEC experiences in provisioning service for the advanced services market can impair its ability to deliver services." UNE Remand Order ¶ 91. Moreover, the FCC concluded that incumbent LECs should not be able to delay entry by denying access to UNEs and "'lock-up' customers in advance of competitive entry." UNE Remand Order, ¶ 91 (footnotes omitted). That is precisely what has happened. In recent reports to the press and investors, SBC states that it has reached 1 million DSL lines in its 13 state region. That figure is many times over all CLECs providing DSL service combined. Accordingly, the time lag associated with self-provisioning is not a viable alternative to obtaining Project Pronto as UNEs.

In pre-filed testimony, Sprint witness Burt testified that it has taken Sprint 6-8 months to attempt to collocate a DSLAM at a SBC/Ameritech RT. Sprint Rehearing Ex. 3.0 (Burt), at 23. The evidence presented at the hearing now indicates that it has taken Sprint at least a year to turn up service at the particular RT because, after being rejected by SBC/Ameritech for collocation in the RT because Sprint's DSLAM did not fit in the RT and rejected for adjacent collocation next to the RT because collocation space still was available in the RT (Rehearing Tr. (Welch), at 1515-1516), Sprint was forced to begin the process of acquiring an easement from a nearby property owner in early August 2000. . (Ameritech Rehearing Burt Cross Exh. 2, at 1). Sprint expects the construction of the engineered control splice so it can obtain access to the loops served by that RT to be finished in October, 2001. (Id.). Thus, it will take Sprint, in the one example where placing a DSLAM in the loop plant has been attempted, over a year to turn up service.

This type of timeline clearly harms CLECs in getting to the market to provide advanced services and demonstrates impairment. In fact, Mr. Ireland testified that a one year delay in rolling out Project Pronto would be very harmful to SBC/Ameritech in

the marketplace. He acknowledged that a year delay for a CLEC in implementing a particular technology also would be a serious competitive harm for that CLEC. (Rehearing Tr. (Ireland), at 448-449). In sum, without unbundling Project Pronto, Joint CLECs clearly are impaired from a timing perspective.

In terms of ubiquity, the FCC's impair analysis includes ubiquity as a factor when state Commissions determine whether a CLEC is impaired without access to UNEs. Specifically, the FCC directed that Commissions should consider the extent to which a competitive carrier can provide ubiquitous service using alternative facilities, given the fact that the ability to provide service may be impaired where lack of access to a UNE "materially restricts the number or geographic scope of the customers" a competitive carrier can serve. UNE Remand Order ¶ 97. Because without access to Project Pronto, data CLECs cannot provide ubiquitous xDSL services the inability to use the Project Pronto platform "materially restricts the number or geographic scope of the customers" a competitive carrier can serve. UNE Remand Order at ¶ 97. The provisioning of xDSL over home run copper is distance sensitive, and generally cannot be supported on copper loops over 18,000 feet. Project Pronto extends the reach of xDSL by connecting copper subloops of no more than 12,000 feet (from the RT to the customer premises) to fiber subloops between the central office and the RT. The hybrid copper/fiber architecture of Project Pronto makes xDSL available to nearly twice as many SBC customers as would have been served on home run copper. Rhythms' Watson Rehearing Exh. 2.0P, at 19 (citing Rhythms Texas Exh. 63A (030629 to 030680), at Bates 030630). If denied access to Project Pronto, data CLECs will only be able to provide xDSL via line sharing to customers located within 18,000 feet of a central office. Rhythms' Watson Rehearing Exh. 2.0P, at 19.

Furthermore, even for loops below 18,000 feet, DSL performance on all copper loops can be inferior to DSL performance on Project Pronto loops, because Project Pronto limits the copper segment distance to 12,000 feet, thereby obtaining higher data throughput rates. Id. In addition, there is a significant risk of throughput degradation for DSL services on all-copper loops after Project Pronto is deployed, because the generation of a strong DSL signal in the field at the RT can create significant levels of cross-talk. Id.; See also, Sprint Rehearing Ex. 5.0 (Dunbar), at 38). SBC/Ameritech supplied a document titled "Additional Noise Margin Ratio," which SBC claims addresses and resolves this issue. However, the Joint CLECs do not believe SBC's claim. As is shown in Exhibit DW-4 in Rhythms' Rehearing Exh. 2.1 (Watson), the T1E1.4 working group of ANSI Committee T-1 indicates that ADSL deployed in remote terminals is not spectrally compatible with existing home run copper based ADSL services. SBC-Ameritech's implementation of the additional noise margin ratio approach will not resolve the problems identified in Exhibit DW-4. Rhythms' Rehearing Exh. 2.1 (Watson), at 17.

In terms of network operations, the FCC concluded that "material operational or technical differences in functionality that arise from use of alternative technologies may also impair a requesting carrier's ability to provide its desired services." UNE Remand Order, ¶ 99. The evidence in this case amply demonstrates that unbundling Project

Pronto is technically feasible. In fact, SBC/Ameritech ordered its employees charged with developing UNEs to "roll out a product offering to the CLEC community that could be offered over the architecture." Rehearing Tr. (Boyer), at 863:4-6. When SBC first asked the FCC for a waiver from its Merger Conditions that would allow SBC to own the line cards in the NGDLC and the OCD, SBC provided a sample appendix to be added to CLEC interconnection agreements that offered Project Pronto as UNEs. Rhythms' Watson Rehearing Exh. 2.0, at 3; Letter from Paul K. Mancini, SBC Vice-President and Assistant General Counsel, to Lawrence Strickling, Common Carrier Bureau Chief, February 18, 1999. Moreover, SBC has also acknowledged its obligation to unbundle its Project Pronto architecture. Rhythms' Watson Rehearing, Exh. 2.0P, at 3 (citing Rhythms Texas Exh. 65A, (030306 to 030327), at Bates 030310). Rhythms' Watson Rehearing Exh. 2.0P, at 3. (citing Rhythms Texas Exh. 65A, (030306 to 030327), at Bates 030310. It was only in April 2000, that Ameritech relabeled the Project Pronto offering from UNEs to an end-to-end service offering after SBC/Ameritech's "legal folks" and "higher ups" suddenly decided the issue while Mr. Boyer, SBC's project manager for Project Pronto, was on vacation. Rehearing Tr. (Boyer), at 887: 14-18. The CLECS assert that, regardless of the name, the evidence in this case (discussed in detail below) demonstrates that it is technically feasible for SBC/Ameritech to provide the network elements of Project Pronto as UNEs. Rehearing Tr. (Boyer), at 894:12-895:1; 904:10-17.

C. Staff

1. Staff's Position on Packet Switching Issues

The FCC has spoken to the issue of packet switching, which is at issue here. Packet switching is defined as the function of routing data units based on addresses or information contained in the packets. UNE Remand Order, ¶¶302, 304. Packet switching is required to be unbundled only in very limited circumstances. UNE Remand Order, ¶¶306, 313. The FCC declined to require general unbundling of packet switching based upon evidence that CLECs are aggressively deploying the infrastructure necessary to provide packet switching. UNE Remand Order, ¶¶306-7. The limited exception to this rule occurs where conditioned copper loops are unavailable, thereby preventing CLECs from deploying the D-SLAM devices necessary to provide xDSL service. UNE Remand Order, ¶313. Significantly, the FCC suggests that CLECs aggrieved by this conclusion may seek relief from state public utility commissions. UNE Remand Order, ¶312.

Ameritech appears to argue that Project Pronto is essentially a packet switching network, which is not subject to federal unbundling requirements, and which should not, accordingly, be unbundled. This argument, however, is ill taken. First, the FCC, while declining in the UNE Remand Order to require that packet switching be unbundled except in limited circumstances, UNE Remand Order, ¶¶302, 304, 306, 313, nonetheless found that state Commissions are authorized to order the unbundling of packet switching technologies. UNE Remand Order, ¶ 312. In addition, the FCC found that:

> [I]f a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching . . . . [Accordingly], incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.

UNE Remand Order, ¶ 313

There appear to be real questions regarding whether (a) there will in all cases be space available for CLECs to collocate – virtually or otherwise – DSLAMs at RTs, or whether such collocation is otherwise possible; and (b) whether spare copper loops will be available. In addition, there is little question that Ameritech intends to deploy Project Pronto for its own use. Accordingly, the packet switching exemption does not provide Ameritech with a compelling argument against unbundling.

Indeed, arbitrators at the Texas PUC have recently found that the same Project Pronto architecture at issue here is not exempt from unbundling by virtue of the packet switching exception. See Arbitration Award, Petition of IP Communications / Petition of Covad Communications and Rhythm Links, Inc., Texas PUC Docket Nos. 22168 / 22469 (hereafter "Texas Award"). There, the arbitrators specifically found that the Project Pronto architecture is designed to, and in fact does, replace copper facilities, depriving CLECs of means to serve customers other than the Project Pronto network. Texas Award at 76-7. In so finding, the arbitrators rejected SBC "overlay network" argument. Id. Next, the arbitrators determined that CLECs will be impaired in their ability to compete based upon the virtual certainty that spare copper facilities will not exist everywhere. Id. at 77. Third, the arbitrators found that SBC does not allow CLECs to collocate DSLAMs at RTs on the same terms and conditions that it affords itself, in part because it does not permit CLECs to own and collocate their own line cards. Id. at 72, 77-8. Finally, the arbitrators rejected out of hand SBC's assertion that Project Pronto was not deployed for SBC's own use. Id. at 78. Accordingly, Ameritech cannot successfully rely upon the fact that the FCC has declined to unbundle packet switching in general.

Staff concludes that the unbundling of Project Pronto remains a sound pro-competitive policy that does not violate federal law. Staff Ex. 1.0 at 2 et seq. Moreover, such unbundling can be accomplished without reducing Ameritech's incentives to invest in network upgrades. Id. at 11 et seq. As the testimony and record of each of the four proceedings reflects, for meaningful competition to develop, competitors must have an effective means to compete with the incumbent. Staff Ex. 1.0 at 3. Unbundled access to Project Pronto is crucial for CLECs to compete with Ameritech in high-speed data services. Id. at 3-4.

2. Staff Position on Impair Standard

Section 251(d) of the Act, 47 U.S.C. §251(d), charges the Federal Communications Commission (hereafter "FCC") with "establish[ing] regulations to implement the requirements of this section." Specifically, Section 251(d) requires the FCC, in determining what unbundled network elements must be made available under section 251(c)(3), to "consider, at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) whether the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the service that it seeks to offer." 47 U.S.C. §251(d)(2).

The Third Report and Order and Fourth Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, FCC No. 98-238 (November 5, 1999)(hereafter "UNE Remand Order") provides specific guidelines for interpretation of Section 251(d) and determining whether individual network elements must be unbundled. Lack of access to an element on an unbundled basis "impairs" the ability of a CLEC to provide a service it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning, or purchasing an alternative from a third party supplier, lack of access to the element "materially diminishes" the CLEC's ability to provide the service it seeks to offer. UNE Remand Order, ¶51. The "impair" standard applies to non-proprietary elements. UNE Remand Order, ¶31. To determine whether the lack of access to an element materially diminishes a CLEC's ability to provide a service to the point that such ability is impaired, the FCC considers the following factors:

1) All forward-looking costs that CLECS would incur using alternative elements. UNE Remand Order, ¶¶72, 74. If the use of an alternative element would impose substantial sunk or fixed costs upon a CLEC, this factor militates in favor of unbundling. See UNE Remand Order, ¶¶75-80. In considering costs, it is proper to consider which customer classes the CLEC seeks to serve. UNE Remand Order, ¶¶81-83.

2) The time necessary to obtain or provision alternative elements, or more accurately, the delays associated with self-provisioning elements, as opposed to obtaining them as unbundled elements from ILECs. UNE Remand Order, ¶¶89-90, 95. If such delays exceed six months to one year, this factor supports unbundling. UNE Remand Order, ¶91.

3) The quality of alternative elements available. UNE Remand Order, ¶96. If the use of alternative elements compels a CLEC to provide service that is diminished in quality, this argues in favor of unbundling. Id.

4) The ability of CLECs to provide service on a ubiquitous basis using alternative elements. UNE Remand Order, ¶¶97-98. If the use of an alternative element materially restricts the number or geographic location of customers that a CLEC can serve, this supports unbundling of the element. Id.

5) Material operational or technical differences in functionality that arise from interconnecting alternative elements may also impair a CLEC's ability to provide service, which will, if found, support unbundling. UNE Remand Order, ¶99.

In addition to the "impair" standards, the FCC determined that other factors might be considered in determining whether a network element should be unbundled. UNE Remand Order, ¶101. This authority, the FCC concluded, is based upon the language of Section 252(d)(2) which requires consideration, "at a minimum," the necessity of an element, or the impairment that lack of access to an element would cause. See 47 U.S.C. §252(d)(2).Other factors that may be considered, in addition to the "impair" standard, when analyzing whether an element should be offered on an unbundled basis, are the following:

1) Whether requiring the element to be offered on an unbundled basis will encourage the rapid introduction of competition into all markets. UNE Remand Order, ¶107.

2) Whether requiring the element to be offered on an unbundled basis will promote facilities-based competition, investment and innovation. UNE Remand Order, ¶110.

3) Whether requiring the element to be offered on an unbundled basis will reduce regulatory obligations. UNE Remand Order, ¶113.

4) Whether requiring the element to be offered on an unbundled basis will provide uniformity and predictability which will enable new entrants to develop national and regional business plans, and attract capital. UNE Remand Order, ¶114.

5) Whether requiring the element to be offered on an unbundled basis will be practical to administer and apply. UNE Remand Order, ¶115

Although Ameritech consistently argues that Project Pronto is an overlay network and does not replace existing facilities, the numerous proceedings have made clear that alternatives to the unbundling of Project Pronto are, in reality, often no alternatives at all. Staff Ex. 1.0 at 3. For example, Ameritech contends that a CLEC that wants to provide data services in an area served by Project Pronto could collocate at the remote terminal ("RT") and purchase dark fiber from Ameritech (if available) or purchase fiber capacity from a third party. Id. However, operational and administrative obstacles,

particularly the lack of space in RTs, often would make collocation at the RT impossible. Id. Even where RT collocation is possible, the number of customers served by a single RT often makes leasing collocation space an excessively costly alternative on a per-customer basis. Id. at 3-4. Staff believes it is not a feasible alternative, technically or economically, to require a CLEC to collocate at each and every RT, many of which might terminate only a few hundred sub-loops. Id. The FCC recognizes this fact in its Line Sharing Reconsideration Order when it states that:

> [F]iber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminals is likely to be costly, time consuming, and often unavailable. We provide this clarification because we find that it would be inconsistent with the intent of the Line Sharing Order and the statutory goals behind sections 706 and 251 of the 1996 Act to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of xDSL services.

Third Further Notice Of Proposed Rulemaking, CC Docket No. 98-147; Sixth Further Notice Of Proposed Rulemaking; CC Docket No. 96-98; FCC No. 01-26 (Line Sharing Reconsideration Order), ¶ 13.

Ameritech proposes, as a second alternative to CLEC use of the Project Pronto network is for a CLEC to resort to spare all-copper loops. Staff Ex. 1.0 at 4. However, in areas where Ameritech initially served communities by an "old" fiber-fed DLC architecture, spare copper loops connecting the RT with the CO are typically unavailable. Id. In addition, many of the copper loops being replaced by Project Pronto are probably incapable of delivering advanced services because of their considerable lengths. Id. Where all-copper loops are capable of delivering advanced services, it is likely that the copper loop would require loop conditioning, which is an additional expense not incurred by Ameritech or a CLEC having unbundled access to Project Pronto. Id.

Further, In finding that competitors should have unbundled access to Project Pronto, this Commission previously determined that the federally mandated line sharing requirement applies to all loops, not just loops consisting entirely of copper facilities. This is wholly consistent with federal policies, as the FCC has clearly stated that:

> [T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the word "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services.

Line Sharing Reconsideration Order, ¶10.

In a typical line sharing environment (using central office-based DSLAMs and all-copper loops), CLECs can offer all desired variations of xDSL services that can coexist on a single line with voice services, since CLECs are able to install their own equipment at the CO, enabling them to deploy the types of xDSL services they desire. Staff Ex. 1.0 at 6. In a Project Pronto environment, the equipment used to provide the various types of xDSL services is placed at the remote terminal, instead of the central office. Id. Line cards that plug into Next Generation Digital Loop Carrier (NGDLC) systems at the RT perform the functions that a D-SLAM and a splitter perform at a central office. Id. If CLECs cannot specify the types of line cards deployed at the remote terminal, they do not have the same options as they would in a typical line sharing situation. Id. at 7.

In light of this, the Commission should conclude that CLECs will be significantly impaired in their ability to provide broadband service if the Project Pronto architecture is not unbundled. It is evident that the collocation of DSLAMs (where possible, and where spare copper loops exist) is certain to increase a CLEC's fixed and variable costs of providing service. See UNE Remand Order, ¶¶ 72-83. Likewise, the provisioning of alternatives (i.e., collocation of DSLAMs and obtaining – where possible –conditioned loops) is not a process calculated to facilitate deployment within six months to one year, see UNE Remand Order, ¶ 91, especially in light of the fact that Ameritech is permitted a 105 business day interval for provisioning collocation. See, generally, Order, ICC Docket No. 99-0615. Similarly, a CLEC that must collocate costly DSLAMs in all or most of two thousand-odd RTs – assuming that space is available to do so – will have an extraordinarily difficult time providing ubiquitous service. See UNE Remand Order, ¶¶ 97-98. In addition, the unbundling requirement is virtually certain to materially advance the introduction of competition into all markets, see UNE Remand Order, ¶ 107, and will foster innovation as CLECs employ the functionalities of a variety of ADLU line cards to provide different, variegated products and services. See UNE Remand Order, ¶ 110. Likewise, requiring Ameritech to offer Project Pronto on an unbundled basis will provide uniformity and predictability that will enable new entrants to develop national and regional business plans, and attract capital. See UNE Remand Order, ¶114.

In sum, competitors will be impaired significantly in their efforts to compete with Ameritech if they do not have unbundled access to Project Pronto. The very fact that SBC viewed the existing alternatives as insufficient in order to provide ubiquitous DSL coverage is itself a strong argument for unbundling Project Pronto.

3. Staff's Alternative Proposal

Should the Commission determine that unbundling of Project Pronto, and specifically line card collocation, is infeasible – which the Staff does not recommend – it is nonetheless possible to require Ameritech to offer Project Pronto in the form of an end-to-end unbundled product – a sort of "NGDLC UNE-P". This is vital, since unbundling and some form line card collocation ensures that competitors have the ability to innovate and determine their own competitive offerings, rather than solely relying upon Ameritech's potential deployment schedule. Competitors are allowed to

"push the envelope" when it comes to deploying new and differentiated service offerings to their customers. With line card collocation, the incumbent no longer acts as the gatekeeper to the set of advanced services that will be offered to residential and business customers. Instead, each competitor can use the inherent features and capabilities of the NGDLC even where Ameritech itself is either not ready, or decides not to employ the additional capabilities. In their respective testimony, Ameritech witnesses Drs. Aron, Levin and Crandall ignore the benefits of innovation the Commission's requirements will produce. Increased innovation and a greater variety of services are the main benefits associated with unbundling and therefore competition. Nobody disagrees that unbundling has the potential to, and in most cases indeed does, increase the incumbent's costs. However, such unbundling is done on a regular basis because the perceived benefits with unbundling are assumed to be greater than the additional costs as a result of unbundling. Ameritech's three economists put the emphasis on the additional costs and the potential reduced investment incentives for Ameritech, while completely ignoring the benefits of increased competition and innovation. While this position can be considered rational behavior on Ameritech's part, it should not be forgotten that the Commission's task is to look at both sides of the equation. That is, it has the responsibility to weigh any potential incremental costs to unbundling against the potential benefits associated with increased innovation and competition. It is Staff's opinion that the potential benefits of increased innovation in this fast-changing technological environment outweigh the additional costs associated with unbundling. This is especially true with Staff's proposal to order an end-to-end NGDLC UNE-platform in lieu of the Commission's earlier unbundling requirements. Project Pronto is a multi-year undertaking that will shape SBC's network infrastructure for some time to come. Consumers will benefit from new and innovative services if CLECs have the ability to participate in shaping the technological future.

As noted infra, sound policy dictates that the Commission should act to afford competitive carriers the ability to use the inherent features, functions and capabilities of the NGDLC system as soon as they become available. To accomplish this, CLECs need not own line cards once they are placed into the RT instead, it can be achieved when CLECs can determine the type of line cards to be placed into the NGDLC channel bank. It is crucial that competitive carriers are able to specify a particular line card, but a CLEC need not necessarily maintain ownership of the card after it has been plugged into a slot of a channel bank.

In this rehearing, as in the past, Ameritech asserts that a line card collocation requirement will impose significant additional costs upon it. See, generally, Ameritech Ex. 1.0, 4.0, This is the first time that either SBC or Ameritech gives any specifics as to what those cost might actually be, see, generally, Ameritech Ex. No. 10.0, despite the fact that the line card collocation issue was contested during three proceedings before this Commission, as well as during the negotiations with the FCC that led to the Project Pronto Waiver Order.

Ameritech's claim that it did not know what kind of unbundling requirements it would be subject to until the Commission entered the Order in the instant proceeding

seems disingenuous. The issue of line card collocation came up as early as the spring of 2000, when SBC negotiated a waiver from merger conditions that prohibited SBC from owning advanced services equipment. Subsequent to the negotiations at the FCC, Ameritech had no fewer than three opportunities before this Commission to support, with some estimate of actual costs, its claims that CLEC ownership of line cards presents a major additional expense. It did not take advantage of any.

Staff is skeptical of Ameritech's underlying assumptions for calculating the specific additional capital costs and expenses a line card collocation requirement would necessitate. However, Staff does not dispute the fact that some extra cost will be incurred when Ameritech needs to upgrade its OSS systems to inventory different line cards owned by different CLECs. It appears, however, that Ameritech overstates the additional costs it would incur as a result of a line card collocation requirement.

An example of Ameritech's "worst-case scenario" assumptions is the assumption, for the purposes of its cost studies, that each CLEC would have only one customer per service area interface ("SAI") and thus would "waste" 3 of the 4 ports on the line card, or 75% of the port capacity. Ameritech calculates such inefficient port use to be an additional capital cost of $23,169,643 when 50% of the planned 2090 RTs in Illinois have collocated line cards of five different CLECs. This assumes, of course, that CLECs will go to the trouble and expense of collocating a line card in an SAI to serve only one customer – an assumption which is at best questionable.

If, however, one uses the cost figures provided by Ameritech and assumes that CLECs on average use 3 out of the 4 line card ports, the "waste" associated with the transaction is reduced to one-third of Ameritech's calculated amount, $7,723,214. This assumption is considerably more realistic than Ameritech's "worst case" assumption, since it assumes, among other things, that CLECs will not behave irrationally.

This is just one example of Ameritech's use of "worst-case" assumptions, and it shows how easily the additional costs of line card collocation can be, and perhaps are being, inflated.

This notwithstanding, in the event the Commission decides that it wants to avoid any uncertainty regarding the additional costs of line card collocation, Staff recommends ordering Ameritech to tariff a complete ADSL capable UNE platform, traversing from the CO to the end user premises, using the Project Pronto architecture. Such a tariffed "NGDLC UNE platform" offering would consist of SBC's current broadband service. Compared to SBC's current broadband service, however, this tariff would ensure that Ameritech cannot unilaterally change or modify the terms and conditions of its offering.

Such a platform approach is one of the methods considered by the FCC in its Line Sharing Reconsideration Order. The FCC stated that "such a platform could be defined to include the loop (both feeder and distribution portions, whether copper or fiber), attached electronics, line-card/DSLAM functionality, ATM switching or its equivalent, and transport." Line Sharing Reconsideration Order, n. 135. The Texas

Commission also ordered SBC to unbundle Project Pronto as an end-to-end UNE in a recent Arbitration Award. See Texas Award at 69 et seq.

Such a NGDLC UNE platform will achieve the same goals as a line card collocation requirement. This platform, combined with the requirement that Ameritech offer a modified platform when new line cards become available, ensures there will be sufficient demand for new line cards, and will also give CLECs an incentive to express to the licensed manufacturers of such line cards their preferences for line card features. Such manufacturers, recognizing that CLECs are the actual customers, will have a real incentive to incorporate innovative features and functionalities into new line cards. This is essentially the same scenario as with line card collocation, yet additional costs stemming from multiple owners of line cards at the RT would be avoided, as would administrative problems associated with inventorying of cards.

The NGDLC UNE-P would remove all uncertainty concerning Ameritech's claims that such unbundled access would prevent it from economically deploying Project Pronto in Illinois. All of the claimed extra costs of line card collocation stem from the fact that an individual CLEC owns a specific card, and thus the card cannot be shared among other CLECs. Arguments such as these are no longer valid when Ameritech owns the line card.

To ensure CLECs have the ability to specify alternative line cards, the Commission should require Ameritech to offer a new version of the NGDLC UNE platform as soon as either Alcatel or a licensed manufacturer issues a new line card. For example, the parties appear to agree that, as matters stand currently, only the ADLU card from Alcatel operates in conjunction with the Litespan NGDLC system. However, it is Staff's understanding that Alcatel is currently developing a second line card for the Litespan system. The line card, which will support G.SHDSL, should be made available for any CLEC that requests it, including Ameritech's advanced services affiliate, in a new NGDLC UNE platform offering.

In addition to recognizing, and allowing for, new line card developments, Staff recommends that the Commission order Ameritech to offer a modified NGDLC UNE-P at such time as the vendor of Ameritech's NGDLC system is able to incorporate the capability to provide multiple Permanent Virtual Paths ("PVPs") per channel bank into the system. Ameritech witness Boyer describes a scenario in which a CLEC would reserve all of the DSL capacity in a RT site. Ameritech Ex. 4.0 at 34-37. While Staff is not at all convinced that this is remotely likely, it nonetheless recommends that the Commission not require Ameritech to offer a NGDLC UNE-P with a PVP option until the software in the NGDLC system allows for the "unchaining" of PVPs. When such "unchaining" becomes technically feasible, Ameritech can no longer argue that offering a PVP to a CLEC would reduce the RT's ADSL capacity by one-third. Id. at 34. Currently, the software of the Litespan 2000 system allows for only one dedicated PVP per channel bank assembly. Id.

In addition to eliminating the need for collocation of line cards, the NGDLC UNE platform also eliminates Ameritech's concerns regarding some of the Commission's earlier specific unbundling requirements. Specifically, the Commission would not need to decide whether the copper sub-loop from the RT to the NID and the copper sub-loop from the RT to the serving area interface SAI") are technically feasible sub-loops. Ameritech Ex. 4.0 at 39.

In filing its direct testimony to this proceeding, Ameritech did not propose these specific UNE offerings. Rather, Ameritech proposed two distinct broadband wholesale offerings over its Project Pronto architecture. The first offering is an end-to-end service that provides only a data path from the end user's premises to the CLECs collocation cage. This service can be optionally offered over a line sharing arrangement when the end user customer also receives voice services from Ameritech. The second offering is an end-to-end service that provides the aforementioned data path as well as a voice path to the collocation cage.

Although Ameritech did introduce its broadband service offering in this proceeding, and provided cost support for the offering, it nonetheless has not proposed final rates or illustrative tariffs for the offering. In fact, it appears Ameritech is not recommending that this offering be ordered through the rehearing process.

D. Commission Analysis and Conclusion

The Commission has reviewed the evidence and arguments of the parties and has concluded that, while it unquestionably has the authority to and appropriately did, on the record before it in the original proceeding, order Ameritech to unbundled Project Pronto by providing requesting carriers access to the enumerated piece parts of the system referenced in that Order, that decision should now be modified. That said, We remain convinced that, unless and until requesting carriers have meaningful access to the Project Pronto architecture for the use of line cards that will provision the various types of services they with to provide, they will indeed be impaired in providing those services. Further, we reiterate that all of the requisite circumstances set forth in Section 51.319 are present in Illinois. We reject Ameritech's notion that these situations must be viewed on an RT by RT basis, which would completely stymie, through protracted litigation and regulation, the use of the facilities by requesting carriers. We reiterate our earlier finding, that Ameritech's proffered alternative methods of providing service are illusory.

SBC's Broadband service is not the answer, for a number of reasons. First and foremost, it establishes SBC as the gatekeeper of services that may be provided across Project Pronto by limiting the services to those it wishes to enable, a situation as far from competition as we can imagine. Second, the Broadband Service is subject to modification or withdrawal at Ameritech's whim, once the period associated with the merger commitments expires. Third, the Broadband Service is also subject to price and term manipulation, which, if recent news accounts of the behavior of other ILECs are

true, would suggest that takers of such a service would do so at their own peril in terms of both price and service.

Ameritech's suggestion that CLEC's could participate in the broadband market through cable, satellite or wireless simply begs the question of its obligation to provide requesting carriers access to its network under relevant state and federal statutes and is rejected, as is Ameritech's doomsday "cost study," which the Commission finds was simply a teleological endeavor designed to produce the highest possible costs of compliance imaginable, untempered by anything remotely resembling a dose of reality.

DSLAM collocation fails again because of the same problems associated with lack of collocation space at RTs, timeliness and poor economics. The only "new" evidence the Commission finds persuasive on this issue cuts against Ameritech. Sprint's witness estimated, in unrebutted testimony, that each RT-DSLAM collocation would cost $130,000. Given the projected 2100 Pronto RTs in Illinois, this option is simply not feasible. Thus, the impair standard is satisfied for each of the six UNEs described above.

Nonetheless, We are concerned that our prior order would, in all likelihood have delayed CLEC use of the various network elements as Ameritech, under the guise of making the network and OSS modifications necessary to support the delivery of elements, waited until a requesting CLEC brought an enforcement action compelling delivery. To that end, in this order on rehearing, We accept Staff's alternative proposal and order Ameritech to file, in Illinois, a tariff identical in all respects, including pricing, delivery intervals and opportunity for the installation of new line cards and services, to the tariff for an end-to-end HFPL UNE ordered by the arbitrators in Texas. This solution moots all of Ameritech's arguments relating to the following issues: line card ownership; line card incompatibility; access to sub-loops; PVP exhaust and stranded capacity.

ISSUE III WHETHER PROJECT PRONTO NGDLC LINE CARDS MEET THE FEDERAL LEGAL STANDARDS FOR COLLOCATION.

As noted above, our adoption of Staff's alternative proposal moots issues related to the collocation of CLEC line cards.

ISSUE VI WHETHER UNBUNDLING PROJECT PRONTO DSL FACILITIES IS TECHNICALLY, PRACTICALLY, AND ECONOMICALLY FEASIBLE AND EFFICIENT.

This issue is also mooted by the requirement that Ameritech tariff the HFPL end to end UNE.

ISSUE VIII WHETHER SETTING THE MONTHLY RECURRING CHARGE FOR THE HFPL UNE AT $0 IS UNLAWFUL.

A. Ameritech Illinois' Position

Ameritech Illinois proposes that the Commission set the monthly recurring price for the HFPL UNE at 50% of the Commission-approved monthly recurring price for unbundled loops (plus the incremental facilities and operations costs caused by sharing the loop). Ameritech Illinois supports this proposal as follows:

First, Ameritech Illinois argues that its proposed price is fully consistent with the FCC's TELRIC pricing principles. Under the FCC's TELRIC principles, the cost of a line-shared loop is a shared cost that must be allocated between the two services that cause that cost. Ameritech Illinois asserts that because there are two dedicated connections on a single loop when a CLEC leases the HFPL – one for the voice service and one for the data service – those two connections jointly cause the cost of the loop. Thus, it is reasonable (and necessary) to divide the cost of the loop between those two uses. Because the CLECs have not presented evidence that the market places greater value on the low frequency portion of the loop than on the high frequency portion, common sense and basic economic principles dictate that loop costs should be allocated equally between the two uses.

Second, Ameritech Illinois argues that this price provides a significant discount to CLECs in comparison to the price they would have to pay for an entire loop. This, in turn, would encourage CLECs to enter the residential DSL market. Before line sharing was available, CLECs wishing to use Ameritech Illinois' facilities to provide xDSL service had to purchase an entire loop from Ameritech Illinois. With line sharing, under Ameritech Illinois' proposal, CLECs can purchase the high frequency portion of that loop at a substantial discount – 50% off the current loop price. Ameritech Illinois further asserts that because this price is positive (i.e., non-zero) it will encourage CLECs to deploy their own facilities, including their own loops, where it is economic to do so.

Third, Ameritech Illinois argues that its proposal recognizes that, because CLECs are receiving dedicated use of the high frequency portion of the loop, they should pay for that use. Ameritech Illinois asserts that it is patently unreasonable to require a company to sell any product or service at a zero price, as the CLECs are proposing in this proceeding. Adopting the CLECs' $0 price, would be tantamount to requiring Ameritech Illinois to "give away" the HFPL product. Such a result would not be competitively neutral, as it would place other broadband service technologies that are not priced at zero – such as cable modem facilities or wireless facilities – at a decided competitive disadvantage.

Ameritech Illinois argues that the Commission should reject the CLECs' proposal of a $0 monthly recurring charge for the HFPL for the following additional reasons:

First, Ameritech Illinois argues that the $0 monthly recurring HFPL price would effect a taking of Ameritech Illinois' property without just compensation — indeed, without any compensation — which is unconstitutional. Moreover, Ameritech Illinois asserts, TELRIC requires the establishment of "just and reasonable rates." The CLECs' $0 price violates TELRIC and would lead to an unlawful taking by compelling Ameritech Illinois to provide the HFPL UNE to CLECs at no charge, which plainly is not "just and reasonable compensation."

Second, Ameritech Illinois argues that the CLECs' proposal conflicts with the legal requirements of Section 252(d)(1) of the Act. Ameritech Illinois cites Section 252(d)(1)'s requirement that UNE prices shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network element" and "may include a reasonable profit." In other words, Ameritech Illinois asserts, determining what charge applies to the CLECs for the purchase of the HFPL UNE depends on the cost of the UNE, not on what charge an end user pays for the voice service. Thus, in arguing that a 50% HFPL price will allow Ameritech Illinois to double recover its loop costs because Ameritech Illinois purportedly recovers the costs of the entire loop through its retail rates, the CLECs disregard the statutory mandate that retail rates cannot be considered in setting UNE prices.

Third, assuming the issue were relevant, Ameritech Illinois asserts there is no evidence that it is recovering the entire cost of the loop in its retail rates. To the contrary, Ameritech Illinois asserts that it is likely not recovering the entire cost of the loop because (1) Ameritech Illinois has not been subject to rate-of-return regulation since 1994, and, therefore, has no assurance that it will recover the entire cost of the loop in retail rates; (2) the existing retail rates were based on the assumption that Ameritech Illinois would be guaranteed its service franchise, an assumption that no longer holds true in today's market of competitive access; (3) much of the loop costs are related to capital investments that must be recovered over a period of years, and therefore consideration of current revenues is insufficient to determine whether Ameritech Illinois will fully recover the costs of unbundled loops; (4) CLECs target high-use customers, and, as these customers are lost to the CLECs, their disproportionate contribution to Ameritech Illinois' overall recovery of its loop costs is lost; and (5) competition will preclude it from over-recovering its loop costs.

Fourth, Ameritech Illinois argues that a $0 price would be discriminatory and distort the competitive market for advanced services by favoring CLECs that provide DSL service using the HFPL UNE. Ameritech Illinois asserts that providers of advanced services over other technological platforms pay a positive price for the facilities they use, and that these providers are competitively disadvantaged if providers using the HFPL UNE pay nothing for the facility they use. The CLECs' proposal would incent against the use of other technologies, and would therefore not promote efficient competition. It also would discriminate against voice CLECs who may want to become providers of the HFPL UNE and against carriers that build their own facilities to provide service.

Fifth, Ameritech Illinois asserts that a $0 price would discourage facilities-based competition by CLECs, as well as continued investment in facilities by Ameritech Illinois.

Finally, Ameritech Illinois points out that several state commissions have rejected a $0 price for the HFPL UNE.

B. CLECs' Position

The CLECs did not submit additional testimony on this issue in the rehearing phase of this docket. The Commission assumes the CLECs' position on this issue remains the same as espoused in the initial phase of the docket.

C. Staff's Position

Staff did not file extensive testimony on this issue on rehearing. However, in the initial phase of this docket, Staff urged the Commission to attribute 0% of joint and common loop costs to the HFPL.

Specifically, Staff claimed that: (1) Ameritech Illinois does not incur any additional incremental joint and common costs as a result of a competitor's use of the HFPL; (2) Ameritech Illinois has in the past allocated 100% of such costs to voice, and, accordingly has allocated 0% to the HFPL; (3) Ameritech Illinois' assertion that it fails to recover loop costs from the voice portion of the loop is highly debatable, and (4) Ameritech Illinois has not undertaken at any point in this proceeding to insure against over-recovery. Staff notes that it would find Ameritech Illinois' position more worthy of consideration if, to the extent that it over-recovered its costs, it were prepared to refund overpayments to end-users. Staff also pointed out that other state commissions have recognized that a 0% allocation is proper.

D. Commission Analysis and Conclusion

The Commission finds that there is no new evidence to support a change to the Commission's original conclusion. Ameritech has not proved any incremental costs associated with making the HFPL available. It has failed to demonstrate that its loop rates do not recover all of its costs for local exchange service. Therefore, the monthly line charge for the HFPL shall remain $0.

ISSUE IX WHETHER AMERITECH ILLINOIS MUST ALLOW CLECS TO HAVE DIRECT ACCESS TO ITS BACK-OFFICE SYSTEMS.

A. Ameritech Illinois' Position

Ameritech Illinois argues that the Commission should reject on rehearing the CLECs' proposal for direct access to Ameritech Illinois' back office systems for the following reasons:

First, Ameritech Illinois argues that the real issue is what type of access Ameritech Illinois must allow to its back office systems, not whether those systems constitute OSS. Ameritech Illinois asserts that even if back office systems are considered OSS, that says nothing about whether access to those systems should be provided through direct, unmediated access, or via gateways. Ameritech Illinois contends that the FCC has never ordered ILECs to provide CLECs with direct access to their back office systems. Ameritech Illinois argues the FCC has required only that (1) ILECs must provide access to the information in those systems (UNE Remand Order, ¶¶ 426, 428, 430-31), and (2) the access to that information need only be through electronic gateways—direct, unmediated access is not required. First Report and Order, ¶ 527; UNE Remand Order, ¶ 429; Line Sharing Order, ¶ 107. Ameritech Illinois points out that the FCC has endorsed the use of gateways as the vehicle by which CLECs should access information in an ILEC's systems. In fact, the FCC approved of these gateways as part of SWBT's 271 applications in Texas, Kansas and Oklahoma.

Second, Ameritech Illinois argues that CLECs are entitled under the First Report and Order and the UNE Remand Order only to certain types of information. Specifically, CLECs are entitled to any pre-ordering (loop qualification) information that is available to any Ameritech Illinois employee, and any ordering, provisioning, maintenance and repair, and billing information that is available to Ameritech Illinois' retail arm. Ameritech Illinois argues that Ameritech Illinois' gateways already provide this information to CLECs.

Third, Ameritech Illinois asserts that direct access to its back office systems will allow CLECs to have unfettered access to information that bears no relationship whatsoever to a CLEC's ability to line share or the five OSS functions. Ameritech Illinois argues that much of this information is confidential to end-users, other CLECs, and Ameritech Illinois. For example, back office systems contain unlisted telephone numbers, security alarm information, customer credit information, and commercially sensitive information of CLECs and Ameritech Illinois. Ameritech Illinois asserts that wholesale and retail customers provide this sensitive information to Ameritech Illinois with the understanding that no one outside Ameritech Illinois will access the information. Ameritech Illinois argues that disclosure of the confidential information in its back office systems would not only pose a security risk to end-users, it would allow CLECs to unlawfully use information for marketing and other improper purposes. Ameritech Illinois argues that the Hearing Examiners' Proposed Order on Rehearing in Docket No. 00-0592 recognized as much, and that such access violates § 222 of the Act.

Fourth, Ameritech Illinois argues that, if CLECs are permitted to directly access Ameritech Illinois' back office systems, Ameritech Illinois would have to make numerous enhancements to those systems in order to prevent CLECs from viewing confidential information to which they are not legally entitled. These enhancements, however, would be costly, time consuming, and repetitive of the capabilities already built into electronic interfaces, gateways, and GUIs.

Finally, Ameritech Illinois argues there is no demonstrable benefit to allowing CLECs direct access to back office systems. Ameritech Illinois contends that direct access would not provide CLECs with any more loop qualification information than the CLECs otherwise receive via Ameritech Illinois' interfaces, gateways, and GUIs. Ameritech Illinois notes that the CLECs have audited its databases, yet still have not identified any loop qualification information that they need to provision service that is not already provided by Ameritech Illinois. Ameritech Illinois also argues that its electronic interfaces, gateways, and GUIs provide CLECs with loop qualification information much more quickly than it could be obtained with direct access. Ameritech Illinois adds that CLECs likely would be unable to decipher the information in its back office systems, absent extensive, ongoing training on each system. Ameritech Illinois adds that direct access to its back office systems could cause the systems to fail because they were designed to store information, not to process direct queries by Ameritech Illinois and CLEC retail representatives.

B. CLECs' Position

The CLECs argue that Ameritech Illinois must provide them with direct access as well as gateway access to information in its records, back end systems, and databases. The CLECs argue that the test of what information Ameritech Illinois must provide is not whether its retail operations have access to data, but whether the information is available to any of its employees. They assert that Ameritech Illinois cannot argue that CLECs have not identified any specific data that it is not providing, because CLECs do not know how much useful information exists and where it is located.

The CLECs assert that Ameritech Illinois has offered no evidence that its back office systems would fail if subjected to access by multiple CLECs. Further, they claim that there is no evidence that CLEC employees pose any greater security risk associated with access to the information than do Ameritech Illinois' own employees. The CLECs also assert that the federal statutory and FCC rules concerning Customer Proprietary Network Information (CPNI) are not implicated by granting CLECs direct access to the information in these databases because most of the information is technical in nature and does not constitute CPNI as contemplated by federal law.

C. Staff's Position

Although Staff did not file testimony on this issue on rehearing, in Docket No. 00-0592, Staff agreed with Ameritech Illinois that CLECs should not be given direct access to back office systems.

D. Commission Analysis and Conclusion

The Commission recently disposed of the same issue in the Order on Rehearing in ICC Docket No. 00-0592, where we concluded that direct access was not required by Federal law nor necessary, given the proofs adduced by the parties seeking it. The decision was inconsistent with the approaches taken in Dockets 00-0312 and 00-0313

(cons.) (Orders entered August 17, 2000) ("Arbitration Orders") and in the original order in this docket, which was based in large part upon the Arbitration Orders. In the Arbitrations, We accepted the CLEC's arguments that, without direct access, there was no way to be sure that Ameritech was providing all of the relevant information on all loops in an unfiltered basis. At the time of the arbitrations, the Commission had not yet had the opportunity afforded in Docket 00-0592 to review Ameritech's OSS systems. Now that the review is complete and based upon the modifications that were ordered, We now conclude that Ameritech's OSS support for pre-ordering and ordering xDSL services is, or soon will be adequate and, therefore, We abandon the position taken in the arbitrations, as no longer necessary.

For these reasons, we reverse our decision requiring direct access to Ameritech Illinois' back office systems and adopt Ameritech Illinois' proposed tariff language on this issue.

ISSUE XIII WHETHER SETTING THE NONRECURRING CHARGE FOR MANUAL LOOP QUALIFICATION AT $0 IS UNLAWFUL.

A. Ameritech Illinois' Position

In the initial phase of this docket, Ameritech Illinois proposed a per minute nonrecurring charge for manual loop qualification. On rehearing, Ameritech Illinois is now proposing an average, flat-rated cost per occurrence. Ameritech Illinois bases its proposed cost on the forward-looking time it takes for a Drafter to perform the necessary work steps, and the hourly rate of the Drafter. Ameritech points out that Staff agrees that its newly proposed average cost has several advantages over a per-minute charge.

Ameritech Illinois also points out that the CLECs have not submitted testimony on this issue on rehearing or otherwise demonstrated how the new proposed cost is unreasonable, nor have they proposed any charge that they believe is more reasonable.

Ameritech Illinois argues that the Commission should reverse its conclusion that Ameritech Illinois should not be allowed to charge for manual loop qualification. Ameritech Illinois first argues that denying recovery for manual loop qualification would be an unconstitutional taking of its property.

Ameritech Illinois next argues the Commission incorrectly found that manual loop qualification charges are inappropriate because loop information should have been accumulated in an Ameritech Illinois database long before now, and thus retrievable via the mechanized process. Ameritech Illinois asserts this belief is simply not true. Ameritech Illinois argues that it is not required to provide loop make-up information via a mechanized process for all of its loops, and that the FCC found in ¶ 429 of the UNE Remand Order that ILECs are not required to provide loop make-up information in a mechanized format if it is not available.

Ameritech Illinois also argues there is no evidence that its databases contain loop qualification information on every loop and, even if they did, that would not mean the mechanized loop qualification process would successfully return loop information to the requesting CLEC in every instance. Ameritech Illinois argues it submitted evidence on rehearing demonstrating that in some instances, the mechanized loop qualification process is unable to return loop information to the requesting CLECs even though the information is actually in Ameritech Illinois' systems.

For these same reasons, Ameritech Illinois urges the Commission to reject the CLECs' assertion (made during the initial phase of this docket) that the need for a manual loop qualification is the result of Ameritech Illinois' failure to properly maintain its own database or choosing not to follow its own guidelines and directions, and therefore, that this information should be provided at the cost associated with the production of this information via the mechanized OSS. Ameritech Illinois adds that this argument is baseless because Ameritech Illinois had no legal obligation or business reason to collect and mechanize this information before the FCC issued its Line Sharing Order creating the new HFPL UNE. Ameritech Illinois further asserts that it is beyond question that it must develop loop qualification information manually for many of its loops and incurs real costs in doing so, which it is entitled to recover.

B. CLECs' Position

Although the CLECs presented no additional testimony on rehearing addressing Ameritech Illinois' new proposed cost, they argued in the initial phase of this docket that Ameritech Illinois failed to provide cost support for its manual loop qualification charge and, therefore, the Commission should not approve the charge. The CLECs also asserted that because xDSL services have been available for years, most of the basic loop qualification information should have been captured in Ameritech Illinois' databases some time ago. Thus, the CLECs argue, the forward-looking cost analysis should include data at the fully mechanized processing cost, and not at a manual cost.

C. Staff's Position

Staff believes that the Commission correctly decided in its initial Order that Ameritech Illinois should not be allowed to recover costs for manual loop qualification. However, Staff recommends that if the Commission chooses to reconsider its position, it should adopt the manual loop qualification cost proposed by Ameritech Illinois on rehearing. Staff argues this cost is an improvement over the per minute charge proposed by Ameritech Illinois in the initial phase of this docket. Staff asserts that basing the cost on a drafting clerk's labor rate, rather than an engineer's labor rate (as Ameritech Illinois had previously done), is more appropriate because an engineer's expertise is not required to perform manual loop qualifications. Staff also argues that recovering the cost of manual loop qualification on a flat rate rather than a per minute basis is superior because the actual amount that a CLEC would have to pay for manual loop qualification will be known and will therefore not result in a "to be determined" price.

D. Commission Analysis and Conclusion

There is no new evidence to persuade the Commission to change its conclusion that the manual loop qualification charge should be zero. Ameritech's loop information is available in a mechanized format, so its argument that it needs a manual loop qualification for information in a non-mechanized format is irrelevant. Ameritech Rehearing Ex. 6.0 (Welch) at 2. Furthermore, Ameritech could avoid costs for manually collecting loop makeup information by allowing CLEC's direct access to LFACS and ARES.

ISSUE XIV WHETHER SETTING THE MONTHLY RECURRING CHARGE FOR OSS MODIFICATIONS AT $0 IS UNLAWFUL.

A. Ameritech Illinois' Position

Ameritech Illinois argues that the FCC has held that ILECs are entitled to recover their line sharing-related OSS costs from CLECs and may do so through recurring charges over a reasonable period of time. Line Sharing Order, ¶ 144. Ameritech Illinois argues that its proposed rate for OSS modification is reasonable and represents the costs that actually will be incurred by SBC/Ameritech to modify its OSS systems to support line sharing. Ameritech Illinois points out that it will only charge the monthly OSS modification charge until it recovers the costs of the software upgrade and related activities required to modify its OSS to support line sharing, and thus, there is simply no chance that Ameritech Illinois will over-recover the cost of such OSS modifications.

Ameritech Illinois explains that the rate was developed based on the vendor costs of implementing the OSS modification and on a product management demand forecast of the number of shared lines that will be provisioned over the next three years for the entire SBC/Ameritech serving area. This information was then used to compute the monthly cost per line on a present value basis. Ameritech Illinois asserts that no party has presented evidence that Ameritech Illinois is not incurring these costs or that these costs are not reasonable.

Ameritech Illinois then explains that recovering its OSS costs over a three-year period is appropriate for the following reasons: (1) given the rapidly-evolving nature of the broadband market, a longer recovery period would subject Ameritech Illinois to the risk of its OSS systems becoming obsolete and not recovering the cost of its upgrade; (2) Ameritech Illinois points out that Ameritech Illinois has to pay for the entire cost of the software upgrade upfront, and thus it is not reasonable to require it to carry this cost on behalf of CLECs for longer than three years; (3) ADSL services are premium high-speed data services with a market price of $30 to $50 per month, and thus the OSS modification charge proposed by Ameritech Illinois will not constitute a barrier to entry into the advanced services market because the CLECs will have sufficient revenue from their ADSL offerings to pay it.

Next, Ameritech Illinois argues that CLEC and Staff concerns about Ameritech Illinois' demand projections lack merit. Ameritech Illinois argues it appropriately based those projections on a 1999 Morgan Stanley Dean Witter report. While the CLECs asserted in the initial phase of this docket that Ameritech Illinois should have based the projections on an xDSL forecast included in SBC's October 1999 investor briefing, Ameritech Illinois maintains that that forecast is far too high because (1) it includes the xDSL lines SBC expects to serve outside the SBC 13-state region, not just the xDSL lines within the SBC 13-state region, and (2) it includes all xDSL lines, not just line shared xDSL lines.

Ameritech Illinois also argues that the vendor cost of the software upgrade is appropriate to use as a basis for the development of the OSS Modification charge. Ameritech Illinois explains that the vendor price was negotiated by the SBC procurement organization and represents the cost that SBC must incur on behalf of its incumbent local exchange carriers, including Ameritech Illinois, to implement the FCC's Line Sharing Order. Ameritech Illinois states that it has presented extensive documentation to support the vendor cost and that the record contains no evidence that the cost is not reasonable.

Finally, Ameritech Illinois argues that the CLECs' and Staff's position that CLECs should pay nothing for OSS-related modifications should be rejected because it is contrary to the FCC's holding that ILECs are entitled to recover the cost of OSS modifications. Although the CLECs did not present evidence on this issue on rehearing, Ameritech Illinois points out that they previously argued that they should not pay for OSS modifications because Ameritech Illinois had to make the modifications for its affiliate, AADS. Ameritech Illinois contends this argument misses the point for at least two reasons. First, the Line Sharing Order specifically allows ILECs to recover the cost of OSS modification charges regardless of whether they were incurred to enable an affiliated CLEC, as well as unaffiliated CLECs, to gain access to the HFPL. Second, Ameritech Illinois incurred OSS modification costs to enable all CLECs to submit HFPL orders. Finally, Ameritech Illinois reiterates its arguments under Issue 9 that a zero rate results in an unlawful taking of property without just compensation.

B. CLECs' Position

Although the CLECs did not address this issue in rehearing, in the original phase of this docket they argued that the Commission should adopt a zero rate for OSS modifications.

First, the CLECs asserted that because Ameritech Illinois intends to provide retail ADSL service in Illinois in a line-shared mode via its data subsidiary AADS, Ameritech Illinois would incur all of the same OSS costs to accommodate its affiliate's retail plans even if there were no line sharing by unaffiliated competitors such as Rhythms. Thus, the CLECs argue, there are no incremental, forward-looking OSS costs attributable to line sharing by unaffiliated competitors.

Second, the CLECs argued that Ameritech Illinois has generally failed to meet the test for OSS modification recovery claims contained in paragraph 106 of Line Sharing Order. They assert that before Ameritech Illinois may recover those costs, it must provide a detailed evidentiary basis on which interested parties and this Commission could determine the extent to which any OSS upgrades or modifications benefit Ameritech Illinois' own operations, or an affiliate's, as opposed to being solely for provisioning CLECs with the line-shared loop. The CLECs assert that Ameritech Illinois has not provided the detailed information required to address the FCC's requirement.

Third, the CLECs argued that Ameritech Illinois has not explained why the xDSL demand (the denominator of its calculation) assumed in its cost analysis is lower than the volumes SBC claims it has captured and will capture through its own affiliate alone.

Fourth, the CLECs argued that it is unclear whether OSS upgrade costs meet the TELRIC standard of being efficient, forward-looking economic costs.

Fifth, the CLECs argued that the three-year recovery period is too short and, as a result, causes rates to be much higher than they reasonably need to be.

For these reasons, the CLECs argued that the Commission should reject Ameritech Illinois' proposed OSS modification charge at this time and direct Ameritech Illinois to file any claimed OSS implementation costs in a subsequent all-party docket with the level of particularity and type of documentation that the FCC and the Commission requires.

C. Staff's Position

Staff did not file extensive testimony on rehearing on this issue, but proposes a zero charge.

First, Staff claimed in the initial phase of this docket that the line counts used by Ameritech Illinois in developing its rate probably understate the actual number of DSL lines to be provided by the company, which has the effect of inflating the per line rate for OSS modification because it is developed by dividing the total cost for OSS modification by the total number of lines. Second, Staff claimed that the exact nature of the upgrade is not clear, and the cost of the upgrade may contain charges to Ameritech Illinois by its vendor, Telcordia, which are not the minimum required upgrade components. Third, Staff stated that the cost of this upgrade was of concern. Fourth, Staff argued that the recovery period should occur over 5 years rather than 3 years.

Accordingly, Staff recommends an OSS modification charge of $0. Despite its recommendation that no costs be recovered, Staff acknowledges that Ameritech Illinois actually does incur costs as a result of OSS modification. Staff, however, believes Ameritech Illinois' proposed prices are not well supported in this record.

D. Commission Analysis and Conclusion

Ameritech again failed to present any persuasive evidence to support an OSS modification charge. For that reason and the reasons set forth in the March 14 Order, the Commission will set the OSS modification charge at $0.

III. CONCLUSION AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds the following:

(1) Illinois Bell Telephone Company d/b/a Ameritech Illinois is engaged in the business of providing telecommunications services to the public in the State of Illinois and is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(2) the Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;

(3) the findings of fact and conclusions of law set forth in the prefatory portion of this Order should be adopted as findings of fact and conclusions of law, and these findings of fact and conclusions of law supersede and replace any findings of fact or conclusions of law on the same matters in our March 14, 2001 Order in this docket;

(4) Illinois Bell Telephone Company's shall file, within thirty days of the entry of this Order, an HFPL UNE tariff that reflects the findings and conclusions reached above.

IT IS THEREFORE ORDERED that Illinois Bell Telephone Company's shall file, within thirty days of the entry of this Order, an HFPL UNE tariff consistent with the prefatory portion of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

DATED: August 10, 2001

ADMINISTRATIVE LAW JUDGE

Briefs on Exceptions shall be filed (electronic service on all parties) on or before August 20, 2001;

Replies to Briefs on Exceptions shall be filed (electronic service on the ALJ) on or before August 24, 2001.